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Federal Register

Friday
February 7, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 86–5 of January 16, 1986

Certification To Authorize Continuation of Certain Assistance for Jamaica

Memorandum for the Secretary of State

Pursuant to Section 537 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (P.L. 99–190), I hereby certify that the Government of Jamaica is sufficiently responsive to the United States Government's concerns on drug control and that the added expenditures of funds for that country are in the national interest of the United States.

You are requested to report this determination to the Congress immediately.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 16, 1986.

[FR Doc. 86–2820
Filed 2–5–86; 12:27 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Loan Program Regulations

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a paragraph reference with respect to the addition of flue-cured tobacco variety Reams 266 to the list of discount varieties of flue-cured tobacco for which a reduced level of price support is available. The final rule published in the **Federal Register** on January 31, 1985 (50 FR 4493) which added Reams 266 to this list incorrectly amended 7 CFR § 1464.3(c) instead of 7 CFR § 1464.3(e).

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4281.

Accordingly, Chapter XIV, Title 7 of the Code of Federal Regulations is corrected as follows:

PART 1464—TOBACCO

§ 1464.3 [Corrected]

1. In Part 1464, § 1464.3(e) is amended by inserting "Reams 266," after "Reams 64," each time it appears.

Authority: Sec. 375, 52 Stat. 66, as amended (7 U.S.C. 1375); Sec. 401, 403, 63 Stat. 1054, as amended (7 U.S.C. 1421, 1423).

Signed at Washington, D.C., on February 4, 1986.

Milt J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–2757 Filed 2–6–86; 8:45 am]

BILLING CODE 3410-05-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2; Amdt. 41]

Delegations to Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved the relocation of the Branch Office at Biloxi, Mississippi to Gulfport, Mississippi.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Vizachero, Administrative Information Branch, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies); Administrative practice and procedure; Organization and functions (Government agencies).

The authority citation for Part 101 of Title 13 continues to read as follows:

Authority: Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634.

Part 101, 13 CFR 101.3–2 is amended as set forth below:

* * * * *

1. Part I, Section A, paragraph 1, a (13) is changed as follows:

(13) Assistant Branch Manager/F&I, Gulfport, Milwaukee, and Springfield, Illinois

B.O.'s only	250,000	350,000

2. Part I, Section A, paragraph 1.b. (16) is changed as follows:

(16) Assistant Branch Manager for F&I,

Gulfport, B.O.	250,000	500,000

3. Part I, Section B, paragraph 1.j. is changed as follows:

j. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee and Springfield, Illinois B.O.'s only.

4. Part I, Section B, paragraph 2., subparagraph a (12) is changed as follows:

(12) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

5. Part I, Section B, paragraph 2., subparagraph b (12) is changed as follows:

(12) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

6. Part I, Section B, paragraph 3, subparagraph a (10) is changed as follows:

(10) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee.

7. Part I, Section B, paragraph 4., subparagraph 1 is changed as follows:

1. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee and Springfield, Illinois B.O.'s only.

8. Part IV, Section A, paragraph 1.d. (12) is changed as follows and (13) is removed:

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

Dated: January 27, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–2366 Filed 2–6–86; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 101

[Revision 2—Amdt. 42]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule reflects the structure for Certificate of Appointments (SF–1402) and the legal exemptions from them. Certain officials, including those officially acting in their positions, are exempt from needing a certificate of appointment to purchase goods or services or enter into contracts.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Vizachero, Chief, Administrative Procedures and Documentation Section, Small Business Administration, 1441 L Street NW.,

Washington, DC 20416, Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

For the reason set forth in the preamble and pursuant to authority in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3–2 is amended as set forth below:

1. The authority citation for 13 CFR 101.3–2 continues to read as follows:

Authority: Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended.

§ 101.3–2 [Amended]

1. In 13 CFR 101.3–2, Part VII, Sections A and B are revised and a new Section C is added to read as follows:

Section A. Contract Certificate of Appointment Authority

No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

Section B. Section 7j Agreements Authority

1. Administration and Management of 7j Agreements. To take all necessary actions in connection with the administration and management of agreements awarded under the authority granted in Section 7(j) of the Small Business Act, as amended (formerly under Section 406 of the Economic Opportunity Act of 1964) except the awarding, changing, amending or terminating of the agreements which are actions subject to the contracting authority in Section A, Contract Certificate of Appointment Authority.

a. Regional Administrator
b. Deputy Regional Administrator
c. Assistant Regional Administrator for Minority Small Business and Capitol Ownership Development (MSB–COD)
d. Chief, Business Development, Regional Office, Reg. VII
e. District Director
f. Deputy District Director
g. Assistant District Director for MSB/COD
h. Financial Management Assistance Officer, Minneapolis MN, D/O

Section C. Section 8(a)(1)(A) Contracting Authority (SBAct)

1. To enter into contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services or materials to the Government or to perform construction work for the Government subject to the following:

Each individual who is warranted to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount limit that person may procure. Regional Administrators, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

2. Subcontracting to arrange for the performance of such procurement contracts as stated in paragraph 1 above by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for the construction work, services or the manufacture, supply or assembly of such articles, equipment, supplies or materials or parts thereof, or services or processing connection therewith or such management services as may be necessary to enable the Small Business Administration to perform such contracts, subject to the following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment determines the amount that person may procure. Regional Administrators have no dollar limit under this section.

3. To certify to any Officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, subject to following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount that person may procure. Regional Administrators have no dollar limit under this section.

2. In 13 CFR 101.3–2, Part X, Paragraph 1 is revised to read as follows:

1. Authority to purchase, rent, or contract for equipment, services and supplies for the agency in amounts not to be exceeded. No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators as heads of contracting activities are exempt from this requirement for a certificate of appointment.

3. In 13 CFR 101.3–2, Part X, Paragraph 1, subparagraph e. is revised as follows:

e. Contract for Services. To contract for services for the agency pursuant to Chapter 4 of Title 41, United States Code, subject to the limitations contained in section 257 (a) and (b) of that Chapter. Each individual who has a certificate of appointment to purchase goods or services or enter into contract has a dollar limit inherent in the certificate of appointment. The certificate of appointment limit determines the amount that person may procure. Regional Administrators are limited to $25,000 on open market and up to the maximum order limitation (MOL) on Federal Supply Schedule under this section.

4. Part XI, Section A, paragraph 2 is revised as follows:

2. The authority delegated herein may be exercised by any SBA employee designated as acting in a position designated herein, except that procurement authority requiring a certificate of appointment does not reside in a person acting in a designated position unless that acting individual also holds a certificate of appointment. Procurement certificate of appointments are to individuals, not positions.

Date: January 22, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–2729 Filed 2–6–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-25]

Establish 700' Transition Area; Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace from 700' above the surface for aircraft executing a new instrument approach procedure at the Tillamook Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-25, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Tillamook, Oregon, 700' transition area (50 FR 40035).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700' transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Tillamook, Oregon, Airport.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.181 as follows:

Tillamook, Oregon, Transition Area (New)

That airspace extending upward from 700' above the surface within an 8.5 mile radius of the Tillamook Airport (Lat. 45°25'08" N/Long. 123°48'45" W).

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2664 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 24894; Amdt. No. 328]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on January 16, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. §§ 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 328 EFFECTIVE DATE, JANUARY 16, 1986

FROM	TO	MEA
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500
PEASE, NH VOR	*YUKES, NH FIX	**3500
*5500 - MRA		
**2200 - MOCA		
YUKES, NH FIX	PARSO, ME FIX	*3500
*2200 - MOCA		
§95.6006 VOR FEDERAL AIRWAY 6		
IS DELETED		
OAKLAND, CA VORTAC	*SALAD, CA FIX	
VIA S ALTER.	VIA S ALTER.	4000
*4700 - MCA SALAD FIX, NE BND		
SALAD, CA FIX	*OAKEY, CA FIX	
VIA S ALTER.	VIA S ALTER.	5000
*3000 - MCA OAKEY FIX, S BND		
OAKEY, CA FIX	SACRAMENTO, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	2500
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	
VIA N ALTER.	VIA N ALTER.	*3500
*2200 - MOCA		
ROZZY, CA FIX	*HAGAN, CA FIX	
VIA N ALTER.	VIA N ALTER.	**4000
*7500 - MCA HAGAN FIX, N BND		
**3000 - MOCA		
HAGAN, CA FIX	CONYO, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	S BND	*7000
	N BND	*11000
*2700 - MOCA		
CONYO, CA FIX	SIGNA, CA FIX	
VIA N ALTER.	VIA N ALTER.	*11000
*9000 - MOCA		
SIGNA, CA FIX	RENO, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	11500
§95.6008 VOR FEDERAL AIRWAY 8		
IS DELETED		
AHEIM, CA FIX	*POMONA, CA VORTAC	
VIA N ALTER.	VIA N ALTER.	4000
*10300 - MCA POMONA VORTAC, NE BND		
POMONA, CA VORTAC	CALBE, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	NE BND	10800
	SW BND	5300
CALBE, CA FIX	MEANT, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	NE BND	11500
	SW BND	10700
MEANT, CA FIX	*APLES, CA FIX	
VIA N ALTER.	VIA N ALTER.	11500
*9100 - MCA APLES FIX, SW BND		
APLES, CA FIX	DAGGETT, CA VORTAC	
VIA N ALTER.	VIA N ALTER.	7500
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	9500
§95.6008 VOR FEDERAL AIRWAY 8—Continued		
LAS VEGAS, NV VORTAC	MORMON MESA, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	*7500
*6500 - MOCA		
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
IRON MOUNTAIN, MI VORTAC	HOUGHTON, MI VORTAC	3800
§95.6012 VOR FEDERAL AIRWAY 12		
IS DELETED		
SANTA BARBARA, CA VORTAC	*FILLMORE, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	8000
*6100 - MCA FILLMORE VORTAC, W BND		
FILLMORE, CA VORTAC	*SAUGS, CA FIX	
VIA S ALTER.	VIA S ALTER.	6000
*6300 - MCA SAUGS FIX, NE BND		
SAUGS, CA FIX	PALMDALE, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	7000
§95.6015 VOR FEDERAL AIRWAY 15		
IS AMENDED TO READ IN PART		
MALTS, OK FIX	*PRYOR, OK FIX	2900
*2900 - MRA		
§95.6021 VOR FEDERAL AIRWAY 21		
IS DELETED		
BULGY, CA FIX	DAGGETT, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	8000
DAGGETT, CA VORTAC	DANBY, CA FIX	
VIA W ALTER.	VIA W ALTER.	10000
§95.6023 VOR FEDERAL AIRWAY 23		
IS DELETED		
FRESNO, CA VORTAC	*MENDO, CA FIX	
VIA W ALTER.	VIA W ALTER.	2000
*3000 - MCA MENDO FIX, SW BND		
MENDO, CA FIX	PANOCHE, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	4500
PANOCHE, CA VORTAC	VOLTA, CA FIX	
VIA W ALTER.	VIA W ALTER.	5000
VOLTA, CA FIX	STOCKTON, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	3000
STOCKTON, CA VORTAC	LODDI, CA FIX	
VIA W ALTER.	VIA W ALTER.	2000

FROM	TO	MEA
§95.6023 VOR FEDERAL AIRWAY 23—Continued		
LODDI, CA FIX	SACRAMENTO, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	3000
§95.6025 VOR FEDERAL AIRWAY 25		
IS DELETED		
PASO ROBLES, CA VORTAC	*SARDO, CA FIX	
VIA E ALTER.	VIA E ALTER.	5000
*5500 - MRA		
*5500 - MCA SARDO FIX, N BND		
SARDO, CA FIX	SALINAS, CA VORTAC	
VIA E ALTER.	VIA E ALTER.	5500
§95.6027 VOR FEDERAL AIRWAY 27		
IS DELETED		
MENDOCINO, CA VORTAC	FORTUNA, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	*13000
*6100 - MOCA		
FORTUNA, CA VORTAC	CRESCENT CITY, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	*6000
*3500 - MOCA		
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
BLOTS, SC FIX	CHARLOTTE, NC VOR/DME	2500
CHARLOTTE, NC VOR/DME	*TOLLY, NC FIX	2500
*2600 - MRA		
§95.6054 VOR FEDERAL AIRWAY 54		
IS AMENDED BY ADDING		
CHARLOTTE, NC VOR/DME	SANDHILLS, NC VORTAC	3000
SANDHILLS, NC VORTAC	RAEFO, NC FIX	3000
RAEFO, NC FIX	FAYETTEVILLE, NC VOR/DME	2400
IS AMENDED TO READ IN PART		
SPARTANBURG, SC VORTAC	*GAFFE, SC FIX	3000
*3000 - MRA		
GAFFE, SC FIX	CHARLOTTE, NC VOR/DME	3000
§95.6066 VOR FEDERAL AIRWAY 66		
IS AMENDED TO READ IN PART		
ATHENS, GA VORTAC	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC	SANDHILLS, NC VORTAC	*4000
*2200 - MOCA		

FROM	TO	MEA
§95.6066 VOR FEDERAL AIRWAY 66—Continued		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500
§95.6068 VOR FEDERAL AIRWAY 68		
IS AMENDED TO READ IN PART		
HONDS, NM FIX	ROSWELL, NM VORTAC	
	SE BND	*6000
	NW BND	*9000
*6000 - MOCA		
§95.6083 VOR FEDERAL AIRWAY 83		
IS AMENDED TO READ IN PART		
ROSWELL, NM VORTAC	HONDS, NM FIX	
	NW BND	*9000
	SE BND	*6000
*6000 - MOCA		
§95.6087 VOR FEDERAL AIRWAY 87		
IS AMENDED BY ADDING		
PANOCHE, CA VORTAC	SALINAS, CA VORTAC	6000
SALINAS, CA VORTAC	*SANTY, CA FIX	**5000
*7000 - MRA		
**4000 - MOCA		
SANTY, CA FIX	WOODSIDE, CA VORTAC	5000
WOODSIDE, CA VORTAC	SAN FRANCISCO, CA VOR/DME	4500
§95.6103 VOR FEDERAL AIRWAY 103		
IS AMENDED BY ADDING		
CHESTERFIELD, SC VOR/DME	GREENSBORO, NC VORTAC	2500
§95.6106 VOR FEDERAL AIRWAY 106		
IS AMENDED TO READ IN PART		
MANCHESTER, NH VORTAC	RAYMY, NH FIX	*2600
*2100 - MOCA		
RAYMY, NH FIX	*YUKES, NH FIX	**5500
*5500 - MRA		
**2100 - MOCA		
YUKES, NH FIX	KENNEBUNK, ME VORTAC	*5500
*2100 - MOCA		
§95.6107 VOR FEDERAL AIRWAY 107		
IS DELETED		
PANOCHE, CA VORTAC	*SUNOL, CA FIX	
VIA E ALTER.	VIA E ALTER.	6500
*6500 - MCA SUNOL FIX, SE BND		
SUNOL, CA FIX	OAKLAND, CA VORTAC	
VIA E ALTER.	VIA E ALTER.	4000

FROM	TO	MEA

§95.6108 VOR FEDERAL AIRWAY 108

IS AMENDED TO READ IN PART

MEEKER, CO VORTAC	RED TABLE, CO VOR/DME	*14000
*12800 - MOCA		
RED TABLE, CO VOR/DME	COLORADO SPRINGS, CO VORTAC	*16000
*15000 - MOCA		

§95.6133 VOR FEDERAL AIRWAY 133

IS AMENDED BY ADDING

LINCO, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	4000

IS AMENDED TO DELETE

FORT MILL, SC VORTAC	STANN, NC FIX	3400
STANN, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	*3500
*3000 - MOCA		

§95.6134 VOR FEDERAL AIRWAY 134

IS AMENDED TO READ IN PART

*FAIRFIELD, UT VORTAC	**CARBON, UT VOR/DME#	***12700
*10800 - MCA FAIRFIELD VORTAC, E BND		
**10200 - MCA CARBON VOR/DME, W BND		
***11800 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX	
	E BND	11000
	W BND	9000
TRACI, CO FIX	PACES, CO FIX	*11000
*10100 - MOCA		
PACES, CO FIX	GLENO, CO FIX	13000
GLENO, CO FIX	RED TABLE, CO VOR/DME	14000
RED TABLE, CO VOR/DME	HERLS, CO FIX	
	E BND	*16000
	W BND	*14000
*14000 - MOCA		
HERLS, CO FIX	FUNDS, CO FIX	16000
FUNDS, CO FIX	DENVER, CO VORTAC	16300

§95.6141 VOR FEDERAL AIRWAY 141

IS AMENDED TO READ IN PART

NANTUCKET, MA VORTAC	HYANNIS, MA VORTAC	1700

§95.6142 VOR FEDERAL AIRWAY 142

IS AMENDED BY ADDING

*TWIN FALLS, ID VORTAC	MURTH, ID FIX	
	E BND	13000
	W BND	7800
*12000 - MCA TWIN FALLS VORTAC, E BND		

FROM	TO	MEA

§95.6142 VOR FEDERAL AIRWAY 142—Continued

MURTH, ID FIX	OCLEY, ID FIX	
	E BND	15000
	W BND	9500
OCLEY, ID FIX	*SHEAR, UT FIX	**16500
*16500 - MCA SHEAR FIX, W BND		
**12400 - MOCA		
SHEAR, UT FIX	*MALAD CITY, ID VORTAC	
	SW BND	11000
	NE BND	10000
*13500 - MCA MALAD CITY VORTAC, SW BND		

§95.6143 VOR FEDERAL AIRWAY 143

IS AMENDED BY ADDING

BAYIM, NC FIX	GREENSBORO, NC VORTAC	2300

IS AMENDED TO DELETE

FORT MILL, SC VORTAC	BROKK, NC FIX	3000
BROKK, NC FIX	AZELL, NC FIX	*2600
*2300 - MOCA		
AZELL, NC FIX	GREENSBORO, NC VORTAC	*2500
*2300 - MOCA		

§95.6155 VOR FEDERAL AIRWAY 155

IS AMENDED TO READ IN PART

SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500

§95.6159 VOR FEDERAL AIRWAY 159

IS AMENDED TO READ IN PART

TUSKEGEE, AL VORTAC	KENTT, AL FIX	2600
KENTT, AL FIX	KYLEE, AL FIX	8000

§95.6195 VOR FEDERAL AIRWAY 195

IS AMENDED BY ADDING

STOCKTON, CA VORTAC	TRACY, CA FIX	
	E BND	2000
	W BND	4000
TRACY, CA FIX	SUNOL, CA FIX	5000
SUNOL, CA FIX	OAKLAND, CA VORTAC	4000

§95.6230 VOR FEDERAL AIRWAY 230

IS DELETED

SALINAS, CA VORTAC VIA S ALTER.	PANOCHE, CA VORTAC VIA S ALTER.	6000

FROM	TO	MEA

§95.6244 VOR FEDERAL AIRWAY 244

IS DELETED

OAKLAND, CA VORTAC VIA S ALTER.	SUNOL, CA FIX VIA S ALTER.	4000
SUNOL, CA FIX VIA S ALTER.	TRACY, CA FIX VIA S ALTER.	5000
TRACY, CA FIX VIA S ALTER.	STOCKTON, CA VORTAC VIA S ALTER.	
	E BND	2000
	W BND	4000

§95.6248 VOR FEDERAL AIRWAY 248

IS AMENDED BY ADDING

SALINAS, CA VORTAC	*SARDO, CA FIX	5500
*5500 - MRA		
*5500 - MCA SARDO FIX, N BND		
SARDO, CA FIX	PASO ROBLES, CA VORTAC	5000

§95.6259 VOR FEDERAL AIRWAY 259

IS AMENDED BY ADDING

MOPED, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	4000
BARRETTS MOUNTAIN, NC VOR/DME	HOLSTON MOUNTAIN, TN VORTAC	7500

IS AMENDED TO READ IN PART

CHESTERFIELD, SC VOR/DME	HUSTN, NC FIX	2500

IS AMENDED TO DELETE

FORT MILL, SC VORTAC	MIDET, NC FIX	3700
MIDET, NC FIX	*OLETE, NC FIX	5000
*8000 - MCA OLETE FIX, NW BND		
OLETE, NC FIX	*LIVIL, NC FIX	8000
*8000 - MCA LIVIL FIX, SE BND		
LIVIL, NC FIX	HOLSTON MOUNTAIN, TN VORTAC	7500

§95.6283 VOR FEDERAL AIRWAY 283

IS AMENDED BY ADDING

BULGY, CA FIX	DAGGETT, CA VORTAC	8000
DAGGETT, CA VORTAC	*WHIGG, CA FIX	10000
*12000 - MRA		
WHIGG, CA FIX	BOULDER CITY, NV VORTAC	10000

§95.6293 VOR FEDERAL AIRWAY 293

IS AMENDED TO READ IN PART

BULLION, NV VORTAC	SAMAN, ID FIX	10600
SAMAN, ID FIX	*TWIN FALLS, ID VORTAC	
	N BND	7500

FROM	TO	MEA

§95.6293 VOR FEDERAL AIRWAY 293—Continued

	S BND	8600
*6500 - MCA TWIN FALLS VORTAC, S BND		

§95.6296 VOR FEDERAL AIRWAY 296

IS AMENDED TO READ IN PART

HUSTN, NC FIX	FAYETTEVILLE, NC VOR/DME	2400

IS AMENDED TO DELETE

FORT MILL, SC VORTAC	FAYETTEVILLE, NC VOR/DME	*3000
*2700 - MOCA		

§95.6301 VOR FEDERAL AIRWAY 301

IS AMENDED BY ADDING

PANOCHE, CA VORTAC	*SUNOL, CA FIX	6500
*6500 - MCA SUNOL FIX, SE BND		
SUNOL, CA FIX	OAKLAND, CA VORTAC	4000
OAKLAND, CA VORTAC	COMMO, CA FIX	*5000
*4000 - MOCA		
COMMO, CA FIX	POINT REYES, CA VORTAC	5000

§95.6327 VOR FEDERAL AIRWAY 327

IS AMENDED TO READ IN PART

SALT RIVER, AZ VORTAC	*KNOBB, AZ FIX	
	N BND	8000
	S BND	6000
*8000 - MRA		

§95.6358 VOR FEDERAL AIRWAY 358

IS AMENDED TO READ IN PART

ALEXX, OK FIX	WILL ROGERS, OK VORTAC	2800

§95.6361 VOR FEDERAL AIRWAY 361

IS AMENDED BY ADDING

FARMINGTON, NM VORTAC	MONTROSE, CO VOR/DME	16200
MONTROSE, CO VOR/DME	RED TABLE, CO VOR/DME	15000
RED TABLE, CO VOR/DME	KREMMLING, CO VORTAC	14000

§95.6362 VOR FEDERAL AIRWAY 362

IS AMENDED TO DELETE

MACON, GA VORTAC	NORCROSS, GA VORTAC	*5000
*3000 - MOCA		MAA- 7000
NORCROSS, GA VORTAC	*NELLO, GA FIX	4900
*5000 - MRA		MAA- 7000

FROM	TO	MEA

§95.6364 VOR FEDERAL AIRWAY 364

IS AMENDED BY ADDING

LINCO, NC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	6000

§95.6386 VOR FEDERAL AIRWAY 386

IS AMENDED BY ADDING

SANTA BARBARA, CA VORTAC	*FILLMORE, CA VORTAC	8000
*6100 - MCA FILLMORE VORTAC, W BND		
FILLMORE, CA VORTAC	*SAUGS, CA FIX	6000
*6300 - MCA SAUGS FIX, NE BND		
SAUGS, CA FIX	PALMDALE, CA VORTAC	7000

§95.6392 VOR FEDERAL AIRWAY 392

IS ADDED TO READ

OAKLAND, CA VORTAC	*SALAD, CA FIX	4000
*4700 - MCA SALAD FIX, NE BND		
SALAD, CA FIX	*OAKEY, CA FIX	5000
*3000 - MCA OAKEY FIX, S BND		
OAKEY, CA FIX	SACRAMENTO, CA VORTAC	2500
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	*3500
*2200 - MOCA		
ROZZY, CA FIX	*HAGAN, CA FIX	**4000
*7500 - MCA HAGAN FIX, N BND		
**3000 - MOCA		
HAGAN, CA FIX	*AUDIO, CA FIX	
	N BND	**11000
	S BND	**7000
*9000 - MCA AUDIO FIX, NE BND		
**2700 - MOCA		
AUDIO, CA FIX	CONYO, CA FIX	
	NE BND	*11000
	SW-BND	*7000
*2700 - MOCA		
CONYO, CA FIX	SIGNA, CA FIX	*11000
*9000 - MOCA		
SIGNA, CA FIX	RENO, NV VORTAC	11500

§95.6394 VOR FEDERAL AIRWAY 394

IS ADDED TO READ

SEAL BEACH, CA VORTAC	AHEIM, CA FIX	*3000
*2200 - MOCA		
AHEIM, CA FIX	*POMONA, CA VORTAC	4000
*10300 - MCA POMONA VORTAC, NE BND		
POMONA, CA VORTAC	CALBE, CA FIX	
	SW BND	5300
	NE BND	10800
CALBE, CA FIX	MEANT, CA FIX	
	SW BND	10700
	NE BND	11500
MEANT, CA FIX	*APLES, CA FIX	11500
*9100 - MCA APLES FIX, SW BND		
APLES, CA FIX	DAGGETT, CA VORTAC	7500
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	*9500
*7000 - MOCA		
LAS VEGAS, NV VORTAC	MORMON MESA, NV VORTAC	*7500
*6500 - MOCA		

FROM	TO	MEA

§95.6409 VOR FEDERAL AIRWAY 409

IS AMENDED BY ADDING

CHARLOTTE, NC VOR/DME	LOCAS, NC FIX	3000
LOCAS, NC FIX	RALEIGH-DURHAM, NC VORTAC	*6000
*2200 - MOCA		

IS AMENDED TO DELETE

ATHENS, GA VORTAC	VESTO, GA FIX	2500
VESTO, GA FIX	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC	SANDHILLS, NC VORTAC	*4000
*2100 - MOCA		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2000

§95.6415 VOR FEDERAL AIRWAY 415

IS AMENDED BY ADDING

SPARTANBURG, SC VORTAC	LOCKS, SC FIX	2300

§95.6421 VOR FEDERAL AIRWAY 421

IS AMENDED TO READ IN PART

GUNNISON, CO VORTAC	WENDT, CO FIX	
	N BND	*16300
	S BND	*13000
*13000 - MOCA		
WENDT, CO FIX	CAZUU, CO FIX	*16300
*14500 - MOCA		
CAZUU, CO FIX	SKIER, CO FIX	16300
SKIER, CO FIX	RED TABLE, CO VOR/DME	*16300
*14000 - MOCA		
RED TABLE, CO VOR/DME	KREMMLING, CO VORTAC	14000

§95.6454 VOR FEDERAL AIRWAY 454

IS AMENDED TO READ IN PART

GREENWOOD, SC VORTAC	LOCKS, SC FIX	2300
BAYIM, NC FIX	LIBERTY, NC VORTAC	3000

IS AMENDED TO DELETE

FORT MILL, SC VORTAC	LIBERTY, NC VORTAC	*2600
*2500 - MOCA		

§95.6494 VOR FEDERAL AIRWAY 494

IS AMENDED BY ADDING

CRESCENT CITY, CA VORTAC	FORTUNA, CA VORTAC	*6000
*3500 - MOCA		
FORTUNA, CA VORTAC	MENDOCINO, CA VORTAC	*13000
*6100 - MOCA		

FROM	TO	MEA

§95.6567 VOR FEDERAL AIRWAY 567

IS AMENDED TO READ IN PART

SALT RIVER, AZ VORTAC	*KNOBB, AZ FIX	
	N BND	8000
	S BND	6000
*8000 - MRA		

§95.6585 VOR FEDERAL AIRWAY 585

IS ADDED TO READ

FRESNO, CA VORTAC	*MENDO, CA FIX	2000
*3000 - MCA MENDO FIX, SW BND		
MENDO, CA FIX	PANOCHE, CA VORTAC	4500
PANOCHE, CA VORTAC	VOLTA, CA FIX	5000
VOLTA, CA FIX	STOCKTON, CA VORTAC	3000
STOCKTON, CA VORTAC	LODDI, CA FIX	2000
LODDI, CA FIX	SACRAMENTO, CA VORTAC	3000

§95.6402 HAWAII VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

PARIS, HI FIX	*ARBOR, HI FIX	4000
*8000 - MRA		
ARBOR, HI FIX	HILO, HI VORTAC	3000

§95.6405 HAWAII VOR FEDERAL AIRWAY 5

IS AMENDED TO READ IN PART

ALTIS, HI FIX	MAKEN, HI FIX	
	NW BND	8000
	SE BND	7000
MOANA, HI FIX	*ROWIN, HI FIX	
VIA W ALTER.	VIA W ALTER.	4000
*7500 - MCA ROWIN FIX, N BND		
JESSI, HI FIX	*LAVAS, HI FIX	
VIA W ALTER.	VIA W ALTER.	7000
*7000 - MRA		
LAVAS, HI FIX	MAKEN, HI FIX	
VIA W ALTER.	VIA W ALTER.	7000

§95.6407 HAWAII VOR FEDERAL AIRWAY 7

IS AMENDED TO READ IN PART

MOANA, HI FIX	LANAI, HI VORTAC	4000
LANAI, HI VORTAC	MOLOKAI, HI VORTAC	4000

§95.6411 HAWAII VOR FEDERAL AIRWAY 11

IS AMENDED TO READ IN PART

FROM	TO	MEA

§95.6411 HAWAII VOR FEDERAL AIRWAY 11—Continued

PULPS, HI FIX	MAUI, HI VORTAC	5000

§95.6412 HAWAII VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

GRITL, HI FIX	BAMBO, HI FIX	4500
BAMBO, HI FIX	MAGGI, HI FIX	5000
MAGGI, HI FIX	*SHARK, HI FIX	
	NE BND	13000
	SW BND	5000
*13000 - MRA		

§95.6413 HAWAII VOR FEDERAL AIRWAY 13

IS AMENDED TO READ IN PART

KOKO HEAD, HI VORTAC	BAMBO, HI FIX	4500
BAMBO, HI FIX	TOADS, HI FIX	5000

§95.6415 HAWAII VOR FEDERAL AIRWAY 15

IS AMENDED TO READ IN PART

LIHUE, HI VORTAC	BOOKE, HI FIX	4000
BARBY, HI FIX	*RABAT, HI FIX	10000
*10000 - MRA		
RABAT, HI FIX	*PUMIC, HI FIX	6000
*10000 - MRA		
PUMIC, HI FIX	*ARBOR, HI FIX	4000
*8000 - MRA		
ARBOR, HI FIX	HILO, HI VORTAC	3000
HODAY, HI FIX	EELIC, HI FIX	10000
EELIC, HI FIX	KUMME, HI FIX	
	W BND	10000
	E BND	31000

§95.6416 HAWAII VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

PUPPI, HI FIX	SOUTH KAUAI, HI VORTAC	
	E BND	5000
	W BND	11000
SOUTH KAUAI, HI VORTAC	MORKE, HI FIX	
	NW BND	4300
	SE BND	3000

§95.6421 HAWAII VOR FEDERAL AIRWAY 21

IS AMENDED TO READ IN PART

BISEN, HI FIX	CUTLE, HI FIX	21000

FROM	TO	MEA
§95.6421 HAWAII VOR FEDERAL AIRWAY 21—Continued		
CUTLE, HI FIX	OSTAH, HI FIX	24000
§95.6422 HAWAII VOR FEDERAL AIRWAY 22		
IS AMENDED TO READ IN PART		
BARBY, HI FIX	SARDS, HI FIX	12000
SARDS, HI FIX	BONUS, HI FIX	8000
BONUS, HI FIX	OKALA, HI FIX	6000

FROM	TO	MEA
§95.6422 HAWAII VOR FEDERAL AIRWAY 22—Continued		
BATES, HI FIX	OSTAH, HI FIX	10000
OSTAH, HI FIX	SCOON, HI FIX	22000
§95.6424 HAWAII VOR FEDERAL AIRWAY 24		
IS AMENDED TO READ IN PART		
*LANAI, HI VORTAC	**MAUI, HI VORTAC	9000
*5100 - MCA LANAI VORTAC, NE BND		
**6700 - MCA MAUI VORTAC, SW BND		
§95.6425 HAWAII VOR FEDERAL AIRWAY 25		
IS AMENDED TO READ IN PART		
HILO, HI VORTAC	COOKE, HI FIX	3000
COOKE, HI FIX	BASSY, HI FIX	6000
BASSY, HI FIX	CODDY, HI FIX	9000

FROM	TO	MEA	MAA
§95.7028 JET ROUTE NO. 28			
IS AMENDED BY ADDING			
MILFORD, UT VORTAC	HANKSVILLE, UT VORTAC	18000	45000
HANKSVILLE, UT VORTAC	GUNNISON, CO VORTAC	18000	45000
GUNNISON, CO VORTAC	PUEBLO, CO VORTAC	18000	45000
§95.7060 JET ROUTE NO. 60			
IS AMENDED TO READ IN PART			
HANKSVILLE, UT VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	DENVER, CO VORTAC	18000	45000
§95.7080 JET ROUTE NO. 80			
IS AMENDED TO READ IN PART			
GRAND JUNCTION, CO VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	DENVER, CO VORTAC	18000	45000
§95.7206 JET ROUTE NO. 206			
IS ADDED TO READ			
ALAMOSA, CO VORTAC	GUNNISON, CO VORTAC	18000	45000
GUNNISON, CO VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	ROCK SPRINGS, WY VORTAC	18000	45000
§95.7599 JET ROUTE NO. 599			
IS ADDED TO READ			
MULLAN PASS, ID VOR/DME	U.S. CANADIAN BORDER	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-8		
	IS AMENDED TO DELETE		
POMONA, CA VORTAC VIA N ALTER.	DAGGETT, CA VORTAC VIA N ALTER.	16	POMONA
	V-8		
	IS AMENDED TO DELETE		
DAGGETT, CA VORTAC VIA N ALTER.	LAS VEGAS, NV VORTAC VIA N ALTER.	59	DAGGETT
	V-134		
	IS AMENDED TO DELETE		
FAIRFIELD, UT VORTAC	CARBON, UT VOR/DME	42	FAIRFIELD
GRAND JUNCTION, CO VORTAC	DENVER, CO VORTAC	110	GRAND JUNCTION
	V-394		
	IS AMENDED BY ADDING		
POMONA, CA VORTAC	DAGGETT, CA VORTAC	16	POMONA
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	59	DAGGETT
	V-37		
	IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	PULASKI, VA VORTAC	86	FORT MILL
	V-259		
	IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	HOLSTON MOUNTAIN, TN VORTAC	53	FORT MILL
	J-60		
	IS AMENDED TO DELETE		
GRAND JUNCTION, CO VORTAC	DENVER, CO VORTAC	120	GRAND JUNCTION

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[FR Doc. 86-2711 Filed 2-6-86; 8:45 am]
BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18 and 21

Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers and Large Traders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting amendments to Parts 15, 16, 17, 18 and 21 of its regulations. The amendments to Part 16, which relates to reporting requirements for contract markets, provide that contract markets submit those reports required under Rules 16.00, 16.01 and 16.02 by 3:00 p.m. on the business day following that to which the information pertains. The amendments also require that contract markets submit corrections to errors and omissions on reports submitted pursuant to Part 16 on Commission compatible data processing media.

The amendments to Part 17, which relates to reporting requirements for futures commission merchants ("FCMs"), clearing members and foreign brokers, require that all such persons provide the information required under Rule 17.00 on compatible data processing media unless otherwise approved to report on printed forms or Commission supplied computer printouts. The amendments, as adopted, include an exemptive provision for those firms that do not have the requisite means to comply with the amendments. The amendments to Part 17 also require that foreign brokers file series '01 reports on a daily as opposed to a weekly basis. Additional technical amendments have been made to Parts 15, 17 and 21 which the Commission believes are necessary in order for firms to report on machine-readable media.

Part 18 of the regulations, which pertains to reports furnished by traders, has been amended to require that large traders provide on CFTC form 40 information concerning financial interest in and control of other traders as well as all futures and/or option trading accounts. Traders are required to update their form 40s if these amendments alter the information which has previously been provided to the Commission. The Commission has also adopted changes to Rule 18.04 that clarify the type of information that should be provided by traders on the form 40 concerning their hedging use of option or futures markets.

The adoption of new rules 16.07 and 17.03 delegates authority to decide certain procedural reporting matters to the Director of the Division of Economic Analysis and to the Executive Director.

DATE: These rules shall be effective August 1, 1986.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Associate Director, Market Surveillance, Division of Economic Analysis at the above address. Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION: On July 26, 1985, the Commission published in the **Federal Register** proposed amendments to Parts 16, 17 and 18 of its regulations. These regulations concern reports containing option and futures data which are filed by contract markets, futures commission merchants (FCMs), clearing members, foreign brokers and large traders (50 FR 30450, July 26, 1985).[1] As noted in the release announcing the proposed rule changes, these data are necessary for daily market surveillance purposes and for market analysis and may also be used in research projects. The Commission received 33 comment letters on its proposed rulemaking. These letters included responses from five exchanges, clearinghouses associated with two of the exchanges, the Futures Industry Association, and a vendor of accounting systems whose clients include 23 FCMs. The remaining 24 comment letters were from FCMs, non-FCM clearing members and foreign brokers.

I. Amendments to Part 16—Reports by Contract Markets

A. Time of Filing Reports

As explained in the July 26, 1985, **Federal Register** release, Part 16 of the Regulations requires contract markets to provide certain futures and option information to the Commission in both machine-readable and hard copy form. This information includes the futures and option positions and transactions of members of the clearing organization for a contract market, 17 CFR 16.00; futures and option trading volume, open contracts and prices, 17 CFR 16.01; option large trader reports 17 CFR 16.02; and option month-end reports, 17 CFR 16.04. Contract markets must submit the data required under rules 16.00, 16.01 and 16.02 on the business day following the day to which the information pertains; however, no particular time of day is mentioned in the rules. See 17 CFR 16.00(b), 16.01(d) and 16.02(b).

Because of the large volume of data involved, the Commission updates its data base only once a day with the exchange-submitted data. Timely receipt of these data are essential so that the Commission can process and make them available for analysis on the following business day. In view of the importance of these data to its market suveillance program, the Commission proposed that the exchanges submit the data required under rules 16.00(a), 16.01(a) and 16.02(a) by 12:00 noon of the business day following the day to which the information pertains.

The Commission received comments from ten persons concerning this proposal, six of whom were representatives of exchanges or clearinghouses associated with exchanges. Nine of the ten commenters expressed concern that adoption of the proposed amendments would impose a severe burden on clearing member firms that must submit the data to the clearinghouses for initial processing. Four of the exchanges commenting on this aspect of the proposal cited a number of operational constraints which preclude them from shortening their current processing time for market surveillance data. Significant among these was the time necessary for the exchanges to collect, edit and process large trader option reports and gross futures and option position computations and/or adjustments. These latter data form the basis for open interest data required under Commission rules 16.00 and 16.01.

The exchanges concluded that if the rules were adopted as proposed, clearing members would have to submit their reports to the exchanges two to three hours earlier than is currently required. After polling its member firms, one exchange found that for a large number of such firms this would necessitate the hiring of additional staff and/or starting work approximately three hours earlier. The commenters questioned whether the gains in the Commission's surveillance capability which might accrue from adoption of the proposed rules were justified by the substantial burden which would be

[1] In a September 4, 1985, **Federal Register** release, the Commission proposed certain technical amendments to rules 21.02 and 21.02a concerning special calls for information from industry members (50 FR 35247, September 4, 1985). This included clarifying language that exempts futures commission merchants who carry positions on a fully disclosed basis with another futures commission merchant from reporting such positions to the Commission. Additionally, there were four technical corrections to the ADP format for providing data on machine-readable media. The Commission received no comments on these admendments and is adopting them as proposed as part of the instant rulemaking.

placed on clearing member firms. Other commenters indicated that a 12:00 noon filing time for Part 16 data would seriously impair the accuracy of the data and would necessitate an additional submission each day to correct errors.

The Commission appreciates the concerns of the commenters with respect to the additional reporting burdens which may be placed on clearing members. It is the Commission's policy to minimize costs to the industry for providing data to the extent that it does not impair effective market surveillance. In the present instance, the Commission continues to believe that it is necessary to prescribe a time by which data must be submitted by the exchanges, even though 12:00 noon may not be feasible at the current time.

Comment letters from the exchanges and a Commission staff review of current exchanges practices indicate that a majority of the exchange, either now or with little additional burden, will be able to submit the machine-readable data required under Part 16 by 3:00 p.m. on the day following that to which the information pertains. The Commission believes that by requiring a 3:00 p.m. deadline for submission of Part 16 data it can accomplish a primary purpose of its original proposal. The Commission is aware, however, that at least two exchanges are currently able to submit both hard copy and machine-readable data by 12:00 noon and that a number of others are able to provide hard copy imformation an hour or more in advance of the time that machine-readable data are available. The Commission does not desire to degrade the current timeliness of certain reports, in particular those hard copy reports which can be used immediately for assessing the liquidation of a maturing future. Accordingly, the Commission is amending its proposal to require that the exchanges submit data in hard copy and machine-readable forms at such times as each of the two forms of the data are first available but not later than 3:00 p.m. of the day following that to which the information pertains.

It should be noted that under current rules, the Commission or its designee may instruct exchanges to submit hard copy and/or machine-readable data at different times if an exchange is unable to comply with the time of filing specified in the regulations. See, for example, 17 CFR 16.02(b). The Commission is retaining this flexibility in its amended rules. If an exchange can demonstrate that it cannot meet the proposed timing requirements without an undue burden, the Commission or its designee may instruct such an exchange to submit machine-readable data at a time later than that explicitly set forth in the regulations.

B. Delegation of Authority

The Commission also is adding a new § 16.07 to the regulations delegating to the Director of the Division of Economic Analysis the authority to prescribe the form in which reports must be filed (*i.e.*, machine-readable and/or hard copy) and for exchanges that request exemptions from the requirements of Part 16 to determine the place and time of filing reports. This authority is to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director.

Commission rules 16.00(b), 16.01(b), 16.02(d), and 16.04(b) also require that exchanges use a format and coding structure approved in writing by the Commission or its designee. The Commission's Office of the Executive Director has been responsible for supplying exchanges with a model format for reporting in machine-readable form and for determining whether exchanges comply with this format. Accordingly, new Commission rule 16.07 also contains a delegation of authority to the Executive Director to approve the format and coding structure for exchange data supplied in machine-readable form under Part 16 of the regulations.

C. Types of Machine Media

The Commission also proposed to amend rules 16.01(b), 16.01(d), 16.02(b) and 16.04(b) to reflect accurately the types of magnetic media that are compatible with the Commission's data processing system. (50 FR 30451 July 26, 1985). No persons commented on this aspect of the Commission's proposed rule changes.

At the time the proposal was set forth, compatible data processing media included only magnetic tapes and diskettes. As discussed more fully below, the Commission intends to add certain varieties of telecommunication equipment to its ADP center in Chicago in response to requests for direct transfer of Part 17 data from FCMs and clearing members to the Commission. Accordingly, the Commission is adopting in final form a definition of compatible magnetic media which includes dial-up transmission and which will be applicable as well to reports of contract markets pursuant to Part 16 of the Commission's regulations. The Commission believes that dial-up data transmission may assist the exchange in meeting the new time requirements set forth in Part 16 since delivery to the Commission of a physical tape would no longer be required.[2]

D. Errors or Omissions

The Commission expects that contract markets will maintain a program designed to detect errors or omissions in data supplied by them under Part 16 of the regulations. Amendments to rule 16.06, which concerns the reporting of errors or omissions to the Commission, were proposed in order to clarify the manner in which exchanges must notify the Commission of such errors and omissions. The proposed amendments would require that corrections to data filed in machine-readable form under Part 16 also be provided to the Commission on compatible data processing media. Two exchanges commented on this proposal. Both exchanges noted that if the proposed amendment were adopted, they would need an extended period of time to make programming changes.

The Commission intends to adopt the rule change as proposed, with an effective date of all amendments to Part 16 of August 1, 1986. The Commission believes that this should allow exchanges sufficient time to make necessary adjustments in the internal procedures and/or necessary programming changes to meet the new requirements set forth in Part 16 regarding timing and error corrections.

II. Amendments to Part 17—Reports by Futures Commission Merchants, Members of Contract Markets and Foreign Brokers

Part 17 of the Commission's regulations specifies the information that must be reported, the form and manner of reporting and the time and place for filing reports by FCMs, clearing members and foreign brokers. Firms file information required under rule 17.00 ("01 information") on printed forms, Commission-supplied computer printouts or magnetic tapes.[3] At present,

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[2] Since Parts 16, 17 and 21 of its regulations require that data be provided in machine-readable form, the Commission is adding a definition of "compatible data processing media" to Rule 15.00. The new definition makes clear the type of magnetic media that the Commission can accept without prior notification or approval and which types of media each Commission regional offices can accept. The Commission, in new Rule 16.07, has delegated its authority to approve reporting on other types of magnetic media to the Executive Director. Conforming amendments are also being made to Part 21 of the regulations.

[3] The information required under rule 17.00 includes reportable positions, exchanges of futures for cash and delivery notices issued or received for

Continued

five firms use tapes to provide '01 information.

In the July 26, 1985, **Federal Register** release, the Commission noted that its experience with '01 information reported on tape indicates that it provides more accurate and timely data and reduces processing and/or reporting burdens for the Commission and industry members (50 FR 30451). The Commission also noted that its experience was independently confirmed through a report concerning Commission reporting which was conducted by the General Accounting Office.[4]

Since a large number of firms have their own computer systems or use a service bureau that can provide machine-readable data on their behalf, the Commission proposed amendments to Part 17 that would require all FCMs, clearing members and foreign brokers to file information in machine-readable form unless authorized to report otherwise by the Commission or its designee. The Commission also proposed to require foreign brokers to submit '01 information on a daily rather than a weekly basis. The Commission received 25 comment letters dealing at least in part with its proposed revisions to Part 17.

A. Machine-Readable Data

The Commission's proposed amendments to rule 17.00 specifically provide that, unless otherwise approved by the Commission or its designee, an FCM, clearing member or foreign broker must submit '01 information in machine-readable form on magnetic media that are compatible with the Commission's data processing system and in a form and manner specified in proposed Rule 17.00(g). Proposed rule 17.00(g) allows for reporting only on magnetic tape unless otherwise authorized by the Commission or its designee. The proposed amendments also require that machine-readable data be submitted by 9:00 am at a Commission office in accordance with instructions from the Commission or its designee.

The Commission proposed to delegate its authority to authorize firms to report by means other than machine-readable media to the Director of the Division of Economic Analysis. Proposed Rule 17.03 allows reporting on Commission-supplied computer printouts or printed forms if firms could demonstrate to the Director of the Division of Economic Analysis that technologically they are unable to meet the requirements of proposed rule 17.00. The Commission also proposed deleting current rule 17.03 which allows voluntary submissions of '01 information on machine-readable media. The requirement in current rule 17.03 that a printout of data accompany any submissions made on machine-readable media was proposed as new rule 17.00(a)(3).

Fifteen of the twenty-five comment letters responsive to this proposal requested that any regulation that required the submission of '01 information in machine-readable form have its effective date delayed 6 to 8 months after the adoption of such rules by the Commission. The commenters noted that an extended period of time would be needed by FCMs or service organizations that do the accounting for FCMs and clearing members to reprogram their systems. The Commission is well aware of the need for lead time to reprogram computer systems and has determined to set the effective date of the amendments to Part 17 as of August 1, 1986 which coincides with the effective date of the amendments to Part 16.

The Commission received five comment letters requesting that it allow reporting via data transmission on diskette in addition to magnetic tape. Two persons specifically noted that the Commission should allow reporting on diskettes produced by the IBM system 34 since this system was in common use by the industry.

Another commenter recommended that the Commission support data transmission using 3780 bisynchronous, RJE or SRJE protocols via Bell 208 compatible modems as well as diskettes in IBM single density 3741 format. The commenters noted that tape input would not allow the Commission to realize all potential benefits from machine-readable input since the tapes must be handled by both the reporting firms and the Commission and submission of the data may be delayed by the time required to deliver a tape.

The Commission's original proposal did not preclude the use of magnetic media other than tape but would have required approval for the use of diskettes or data transmission. In light of the comments it received, the Commission is amending its proposal specifically to include, as magnetic media approved for reporting, diskettes in a single density IBM 3741 format and dial-up data transmission at speeds up to 1200 baud asynchronous transmission and 4800 baud synchronous transmission. The use of other forms of magnetic media or transmission will require prior approval from the Commission or its designee.

Since the term "compatible data processing media" is used in Parts 16, 17 and 21 of its regulations, the Commission has determined to add a definition of this term as a new paragraph to Rule 15.00 which defines terms used in Parts 15 through 21 of Chapter 17 of the Code of Federal Regulations. New paragraph 15.00(1) also specifies the Commission offices that can accept the various media.

The comments concerning data transmission have also caused the Commission to reconsider the need for proposed rule 17.00(a)(3), which would require that data submitted in machine-readable form be accompanied by a complete and accurate printout of the data. This requirement would provide a source by which the Commission could determine if certain errors such as record omissions occurred in creating or reading magnetic media. This requirement, however, may conflict with certain objectives associated with requiring machine-readable input, in particular if the data are transmitted. The Commission believes that with the addition of a sequence number to the record format for '01 information, it will have sufficient ability to check for errors or omissions. In view of the above, the Commission is amending its proposal by deleting rule 17.00(a)(3) and by requiring under rule 17.00(g) that a sequence number be included on each data record supplied to the Commission.[5]

Two commenters, the FIA and a service organization, expressed concerns about error corrections. The FIA conducted an informal survey of its members and found that if errors or omissions had to be provided in machine-readable form, it would complicate programming efforts and would require more than a 6 to 8 month lead time in order for its members to achieve compliance with the proposed rules. As noted by the FIA, the Commission made no reference in its July 26, 1985, **Federal Register** release to procedures for correcting errors.

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each special account. A special account is any account in which there are reportable positions, that is, positions which exceed certain levels established by the Commission. See 17 CFR 15.00(a)(2), (c) and 15.03, 1985.

[4] Report to the Committee on Government Operations, House of Representatives of the United States, GAO/GGD-83-89, April 11, 1983.

[5] The Commission is amending its proposed rule 17.00(g) to require that the sequence number appear in colums 46-53 of each record. The Commission notes that this amendment should not significantly affect those FCMs which are currently supplying tapes to the Commission since at the present time columns 46-53 are used as filler. Moreover, the cost of making this change should be more than offset by not having to produce and deliver an output of the data to the Commission. FCMs currently supplying tapes will have until August 1, 1986, to add a sequence number to their current formats.

Currently, the Commission only accepts corrections in hard copy form and will continue this practice.[6] To make this clear, the Commission is amending its proposal by adding a new rule 17.00(h), which requires that corrections to previous days' data be supplied on printed '01 forms or on a computer printout using a format and coding structure approved by the Commission or its designee. The Commission also notes that at present it produces a printout of the '01 information for correction purposes that is given to the five FCMs currently supplying tapes. The Commission intends to discontinue this practice when its amendments to Part 17 become effective.

Both commenters also noted that if the Commission maintains a 9:00 am filing time as proposed, the accuracy of the reports the Commission receives on machine-readable media may be questionable. Final adjustments may be required to the data as a result of the clearing process or positions may have to be combined for reporting to the Commission. The service organization requested a filing time of 12:00 noon to coincide with the submission of the data required under Part 16.

Industry members have an obligation at all times to provide the Commission with accurate reports. As with Part 16 data, the Commission recognizes that there may be significant costs to firms to provide accurate reports within relatively restrictive time frames and that there may be some later time at which reports can be filed that will serve the Commission's purposes. The Commission begins processing '01 information concerning markets in the eastern time zone at about 11:00 am eastern time. Series '01 information concerning all other markets are processed on a similar schedule based on central time. In view of the above and the Commission's need to maintain its current processing schedule, the Commission is amending its proposal concerning the time at which reports must be filed. As amended, proposed rule 17.02 requires that '01 information be received in the appropriate regional office on the business day following the day for which reports are filed when such reports are first available but not later than:

(1) 9:00 am, if the '01 information is submitted in hard copy form;

(2) 10:30 a.m., if the '01 information is submitted on computer tape or diskette; or

(3) 11:00 a.m., if the '01 information is transmitted via telecommunications.

The times referred to in (1) through (3) above are eastern time if the information concerns markets located in that time zone and central time for information concerning all other markets. The Commission is requiring firms to submit the information when it is first available in an attempt to prevent congestion problems which might otherwise occur if all firms, particularly those using dial-up transmission, file at a single time. The earliest time is required for hardcopy submissions since such data require manual preparation and key entry. Hardcopy submission would be permitted only for firms obtaining an exemption from this rule.[7]

The Commission received nine comment letters expressing concern that the proposed amendments to Part 17 would create a hardship for smaller firms. Seven of the comment letters were from firms that believed they would need to acquire expensive equipment to achieve compliance with proposed rule 17.00.[8] A number of these commenters indicated that they have few reportable accounts and currently spend little time in preparing reports for the Commission. An exchange commented that a few large firms find automated reporting to be cost effective, but the exchange did not believe this was true of the vast majority of firms. The exchange stated that . . ." requiring all firms to conform to this standard would impose a disproportionate burden on small specialized firms carrying a few accounts. To that end, the proposed changes would have an anticompetitive effect in the FCM and clearing member community." The exchange also noted that adoption of the proposed rule change by the Commission would pressure the exchange to accept machine-readable data from its members as well and would necessitate a conversion from the current hard-copy based market surveillance system at considerable expense.

The Commission recognizes that there are certain costs associated with providing data in machine-readable form. These costs may vary from firm to firm, generally depending on whether all position and/or transaction information in accounts carried by a firm are maintained on a computer system. A staff review of the data currently collected by the Commission indicates that at least 50 percent of those firms which currently file '01 information either maintain position and transaction data on their own computer systems or on those of service organizations.[9] These firms account for approximately 90 percent of the '01 information collected and processed by the Commission. A substantial proportion of the firms that use service organizations have few reports to file and on this basis may be characterized as small. Although the Commission received a number of comment letters from such firms requesting that it delay adoption of the proposed amendments, none of the firms indicated that it would be more costly or less efficient for them to provide data on machine-readable media than on hardcopy.

The Commission's proposal is intended primarily to obtain data on machine-readable media from those firms that maintain trader position and transaction data on computer systems for purposes other than Commission reporting. For this reason, the Commission proposed a limited exemption to rule 17.00 which could be granted to firms demonstrating that they are unable technologically to comply with the proposed requirements. The Commission did not envision that firms would be required to purchase expensive computer equipment or employ service organizations solely for the purpose of compliance with Rule 17.00.

With regard to exchanges' surveillance systems, the Commission finds little merit in the suggestion that, as a result of this rulemaking, an exchange will be required to covert to a computer-based system at great expense. Members of an exchange who provide information to the Commission on machine-readable media can provide printouts of the data to the exchange at little additional expense.

B. Delegation of Authority

The Commission received comments from one person on its proposal to allow exemptions from the requirements of

[6] The Commission is making changes to its current software and may in the future be able to process corrections which are supplied in machine-readable form. At such time as it gains this capability, the Commission may further amend its regulations to allow respondents to file corrections on machine-readable media.

[7] The Commission is also amending rule 17.02 to include instructions on the time and place for filing CFTC form 102. This information is currently contained in rule 17.01(c).

[8] Four of the comment letters were from affiliated firms, three of which report as foreign brokers.

[9] These estimates are based on the staffs' direct knowledge of firms which have their own computer systems or use a service organization. Since the staff did not survey the fifty percent of the firms (which account for approximately 10 percent of the '01 data) for which it did not have information concerning computer capabilities, the staff's estimate of the number of firms that can provide data in machine-readable form may be significantly understated.

Rule 17.00. This commenter believed that proposed Rule 17.03 should be "tightly framed" setting specific guidelines for exemptions rather than putting "wide discretion in the hands of CFTC staff."

The Commission is not convinced that it should attempt to set specific standards for exemptions to Rule 17.00. There may be a number of reasons why a firm cannot technologically meet the requirements of Rule 17.00 other than the fact that the firm does not maintain trader position and transaction data on a computer system. Since such reasons may be varied and apply only in individual cases, there does not appear to be a requirement for general guidelines. Moreover, granting exemptions may involve relatively technical issues concerning which Commission staff have the necessary expertise to make determinations guided in the exercise of their discretion by the Commission's intent in adopting the proposed rules.

In this regard, other rules contained in Part 17 of the regulations concern purely technical or procedural matters that require a great deal of flexibility on the part of Commission staff in dealing with allowable exemptions. Specifically, proposed Rule 17.00 (a) and (g) and 17.02 allow discretion by the Commission or its designee in determining compliance with certain matters concerning reporting. Rules 17.00 (a) and (g), respectively, allow the Commission or its designee to exempt firms from reporting on machine-readable media and allow firms to report on types of magnetic media other than those specified in the regulations. Rule 17.02 allows the Commission or its designee certain latitude in specifying the place where reports are to be filed.

In view of the procedural nature of the issues involved, the Commission wishes to delegate its authority in these areas to Commission staff. It is therefore amending its proposed Rule 17.03 to include a delegation of authority to the Director of the Division of Economic Analysis to determine the appropriate Commission office at which a firm must file reports. Similarly the Commission is delegating to the Executive Director the authority to determine acceptable types of magnetic media. In addition, the Commission is adopting as proposed its delegation of authority to the Director of the Division of Economic Analysis to determine exemptions from the requirements contained in Rule 17.00 to submit data in machine-readable form.

C. Account Identifiers

The Commission also requested comment on the desirability of amending Rule 17.01(a) to allow the use of two account identifiers when reporting option and futures data for the same trader. As explained in the July 26, 1984, **Federal Register** release, Rule 17.01(a) requires that a numeric account identifier be used to report futures information to the Commission for compatability with current Commission software. The rule also provides that the same number must be used in reporting option information to the exchange. However, if a trader becomes reportable in options first, some firms currently report alpha-numeric account identifiers to the exchange. If such trader then becomes reportable in futures, the account identifier must be changed to a number to comply with current Rule 17.01(a).

The Commission proposed amending Rule 17.01(a) because modifying the identifier results in additional work for the firms, the exchanges and the Commission. No comments concerning the desirability of this amendment were received by the Commission. Since the proposed amendment may reduce a reporting burden on the industry as well as reduce Commission processing costs, the Commission is amending Rule 17.01(a) to allow the use of an alpha-numeric identifier for accounts that a trader may have in options while requiring a numeric indicator for accounts that a trader may have in futures.

D. Foreign Broker Reporting

The Commission proposed to delete Rule 17.02(b) which allows foreign brokers to file reports on a weekly basis. The Commission's proposed amendments to Rule 17.02(a) would require that all persons, foreign and domestic, send manual series '01 reports and form 102's on a daily basis. As explained in the July 26, 1985, **Federal Register** release, the Commission has found that in certain market situations, weekly reporting by foreign brokers is not sufficient. Moreover, the Commission believes that adoption of these proposed amendments furthers its policy concerning parity of treatment between domestic and foreign market participants. No comments were received on this aspect of the Commission's proposed rule changes, and the Commission is adopting Rule 17.02 concerning foreign broker reporting as proposed.

III. Amendments to Part 18—Reports by Traders

A. Financial Interest and Control

The Commission proposed amendments to paragraphs (5), (8) and (9) of Rule 18.04(a). Rule 18.04 requires each reportable trader to file with the Commission a "Statement of Reporting Trader" on CFTC form 40. 17 CFR 18.04 (1984). The form 40 provides certain biographical information about the trader as well as information concerning the trader's financial interest in organizations that trade futures and/or options and the trader's control over futures and/or option trading accounts. Paragraphs (5), (8) and (9) of Rule 18.04(a) set forth that the trader shall report certain information concerning the following:

(a) Persons whose accounts are controlled by the reporting trader, 17 CFR 18.03(a)(5);

(b) Persons who guarantee or who have a financial interest of 10 percent or more in the account of the trader, 17 CFR 18.04(a)(8); and

(c) Accounts which the reporting trader guarantees or in which the trader has a financial interest of 10 percent or more. 17 CFR 18.04(a)(9).

In at least one instance, a trader has interpreted the use of the term "account" in Rule 18.04 to mean a direct interest in a specific futures trading account. The Commission, however, has generally interpreted and applied these rules more broadly. To conduct effective market surveillance and enforce speculative limits, the Commission must know the relationship in terms of financial interest or control between traders as well as that between a trader and trading accounts. The Commission therefore proposed to modify the language in paragraphs 18.04(a) (5), (8) and (9) to reflect more accurately its intentions.

One person commented on the proposed amendments to Rule 18.04, stating that the proposed amendments greatly expand rather than clarify the type of information that is required on the form 40. The commenter requested that the Commission explain in detail the reasons for this change.

Section 4i of the Commodity Exchange Act ("Act"), 7 U.S.C. 6i, authorizes the Commission to collect information from traders who directly or indirectly make futures contracts or directly or indirectly have or obtain long or short futures positions. In this section of the Act, Congress clearly recognized that the Commission must be aware of traders who indirectly own or control futures positions in order effectively to enforce other provisions of the Act. A narrow interpretation of the current language in Rule 18.04 would not provide the Commission with information concerning indirect ownership or control of futures or option contracts. The

Commission believes that its proposed amendments clarify the type of information that must be provided on the form 40. Accordingly, the Commission is adopting the amendments to Rule 18.04 as proposed.

B. Hedging Use of Futures Markets

The Commission proposed amendments to paragraphs 18.04(b)(3) and 18.04(c)(6) of its regulations to clarify the information that is required on the form 40 concerning a trader's use of futures and/or option markets for hedging. Since no comments were received on these proposed amendments, the Commission is adopting them as proposed.

IV. Other Related Issues

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 et. seq., requires that agencies, in adopting rules, consider their impact on small businesses. Analysis of the final rule amendments to Parts 15, 16, 17, 18 and 21 are not required, however, since the Commission has previously determined that reporting entities such as contract markets, FCMs and similar entities are not "small" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). Nonetheless, the Commission invited comment from any firm that believed the rules would have a significant impact upon its operations.

As noted above, the Commission received a number of comments from contract markets and reporting firms that believed the amendments to Parts 16 and 17 would have an economic impact on their operations or that of their members.[10] The Commission has addressed these concerns by amending its proposal concerning Part 16 and clarifying its policy with respect to exemptions from the new requirements in Rule 17.00. This exemption provides relief to any reporting entity which fails to possess the requisite technical capability to achieve compliance.

[10] One commenter argued that the Commission's definition of small for purposes of the RFA is . . . "an overbroad and simplistic view of the economic makeup of the futures industry and its highly competitive nature." This commenter believed that the burdens imposed by adoption of the proposed rules would fall more heavily on the smaller FCMs. In view of this, the commentator requested that the Commission reconsider its certification as it relates to the proposed rules and take into account their effect on small firms. As noted previously, the Commission is sensitive to the costs that firms incur for reporting, whether or not the firms are certified as small for the purposes of the RFA. As amended, the Commission does not believe that adoption of its proposed rules will have a significant economic impact on any firm regardless of its size.

In view of the above, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed rules, as amended, will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Commission believes that adoption of its proposals as amended will reduce a reporting burden associated with certain existing information collection requirements. These requirements have already been assigned an Office of Management and Budget ("OMB") control number. OMB has been notified by the Commission of the adoption of these proposed amendments, and a copy of this **Federal Register** release has been provided to that agency with an explanation and details of the effects these amendments may have on the subject information collection. No comments were received relating to Paperwork Reduction Act implications.

List of Subjects

17 CFR Part 15

Commodity futures, Reports—general provisions.

17 CFR Part 16

Commodity futures, Reports by contract markets.

17 CFR Part 17

Commodity futures, Reports by Futures Commission merchants, Members of contract markets and foreign brokers.

17 CFR Part 18

Commodity futures, Reports by traders.

17 CFR Part 21

Commodity futures, Special calls.

In consideration of the foregoing the Commission is amending Parts 15, 16, 17, 18 and 21 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for Part 15 is revised to read as set forth below and the authority citations following all the sections in Part 15 are removed:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

2. Section 15.00 is amended by adding new paragraphs (l) as follows:

§ 15.00 Definitions.

As used in Parts 15 to 21 of this chapter:

* * * * *

(l) Compatible Data Processing Media means:

(1) Unblocked, nine track, 1600 BPI magnetic tape using EBCIDIC encoding and a standard IBM label if magnetic media are filed at the Commission's Chicago or New York Regional Offices;

(2) Magnetic diskettes using a single density IBM 3741 format if magnetic media are filed at the Commission's Chicago, New York or Kansas City Regional Office; and

(3) Asynchronous dial-up data transmission at speeds up to 1200 baud or synchronous dial-up data transmission at speeds up to 4800 baud to the Commission's computer center at its Regional Office in Chicago.

PART 16—REPORTS BY CONTRACT MARKETS

3. The Authority citation for Part 16 is revised to read as set forth below and the authority citations following all the sections in Part 16 are removed:

Authority: 7 U.S.C. 2, 4, 6c (a)–(d), 6f, 6g, 6k, 6m, 6n, 7, 12a, 19, and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

4. Section 16.00 is amended by revising paragraph (b) as follows:

§ 16.00 Clearing member Reports.

* * * * *

(b) *Form and manner of reporting; time and place of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media;

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains; and

(3) Except for dial-up data transmissions, at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

5. Section 16.01 is amended by revising paragraph (d) as follows:

§ 16.01 Trading volume, open contracts and prices.

* * * * *

(d) *Reports to the Commission.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information specified in

paragraphs (a) and (b) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media;

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains; and

(3) Except for dial-up data transmission, at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

6. Section 16.02 is amended by revising paragraph (b) as follows:

§ 16.02 Large option trader reports.

* * * * *

(b) *Form and manner of reporting.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved is writing by the Commission or its designee in both hard copy form and on compatible data processing media.

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains. For options on futures and for options on physicals that are settled in cash, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission may direct; and

(3) Except for dial-up data transmission, at the Regional Office of the Commission having local jurisdiction with respect to each contract market.

7. Section 16.04 is amended by revising paragraph (b) as follows:

§ 16.04 Month-end reports.

* * * * *

(b) Form and manner of reporting; time and place of filing reports. Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media.

(2) Not later than the fifth business day following the day to which the information pertains; and

(3) Except for dial-up data transmission at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

8. Section 16.06 is revised to read as follows:

§ 16.06 Errors or omissions.

Contract Markets shall file with the Commission on compatible data processing media using a format and coding structure approved by the Commission or its designee, corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00, 16.01, 16.02 or 16.04.

9. Rule 16.07 is added to read as follows:

§ 16.07 Delegation of authority to the Director of the Division of Economic Analysis and the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section to the Director of the Division of Economic Analysis and the authority set forth in paragraph (b) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as may be designated from time to time by the Director.

(a) Pursuant to §§16.00(b), 16.01(d), 16.02(b), and 16.04(b), the authority to determine whether contract markets must submit data in machine-readable form or hardcopy or both, and the time and Commission office at which such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the Regulations.

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), 16.02(d)(1), 16.04(b)(1) and 16.06, the authority to approve the use of data processing media other than compatible data processing media as that term is defined in § 15.00(1) and to approve the format and coding structure used by contract markets.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

10. The authority citation for Part 17 is revised to read as set forth below and the authority citations following all the sections in Part 17 are removed:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7, and 12a, unless otherwise noted.

11. Section 17.00 is amended by revising the language in paragraph (a)(1) and adding new paragraphs (g) and (h) as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts—Reportable futures positions, delivery notices and exchanges of futures for cash.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all Special Accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made on compatible data processing media in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each reportable futures position, separately for each contract market and for each future in each special account as of the close of the market on the day covered by the report and, in addition, the quantity of exchanges of futures for physicals and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account.

* * * * *

(g) *Media and file characteristics.* (1) Except as otherwise approved by the Commission or its designee, all required records shall be submitted together in a single file. Each record will be 80 characters long. Specific record formats are given below as a set of Cobol Language descriptions. There are two different record descriptions. The file must begin with a Type I record identifying the sequence of Type II records that follow as series '01 data.

(2) The required records are as follows:

```
01 O-T-Type I RECORD:
   05 Filler—PIC X(10) VALUE "X 01 REG".
   05 O-T-REPORT-DATE—PIC X(6).
   05 Filler—PIC X(29) VALUE "Spaces".
   05 O-T SEQUENCE-NUMBER—PIC (8).
   05 Filler—PIC X(27) VALUE "Spaces".
01 O-T-Type II RECORD:
   05 O-T-REPORTING-FIRM-NUMBER—
      PIC 9(5).
   05 O-T-REPORT-DATE—PIC 9(6).
   05 O-T-ACCOUNT-NUMBER—PIC 9(12).
   05 O-T-COMMODITY-CODE—PIC 9(6).
   05 O-T-DELIVERY-MONTH—PIC 9(4).
   05 O-T-LONG-POSITION—PIC 9(6).
   05 O-T-SHORT-POSITION—PIC 9(6).
   05 O-T-SEQUENCE-NUMBER—PIC 9(8).
   05 Filler—PIC X(8). VALUE "Spaces".
   05 O-T-NOTICES-ISSUED—PIC 9(5).
   05 O-T-NOTICES-STOPPED—PIC 9(5).
   05 O-T-BUY-XFC—PIC 9(4).
   05 O-T-SELL-XFC—PIC 9(4).
```

05 Filler—PIC X(1). VALUE "Spaces".

(3) Field definitions for each record are as follows:

(i) *Reporting Firm Number.* A five digit number assigned by the Commission to each FCM, clearing member and foreign broker which reports series '01 data.

(ii) *Report Date.* The date on which the reported positions were held by traders. Dates are encoded in a YYMMDD format where YY is the last 2 digits of the year, MM is the month and DD is the date with a leading 0 for months and days 1–9.

(iii) *Account Number.* A unique identifier assigned by the reporting firm to each special account. The field is 0 filled with account number right justified. Assignment of the account number is subject to the provisions of §§ 17.00 (b) and (c) and 17.01(a).

(iv) *Commodity Code.* A six character identifier assigned by the CFTC to identify uniquely a contract traded on a specific exchange. The code is in CCMMS format where CCC identifies the commodity, MM identifies the exchange and S distinguishes between two or more contracts specifying delivery of the same commodity on the same exchange.

(v) *Delivery Month.* The year and month of delivery specified in the contract in YYMM format. YY is the last two digits of the year and MM specifies the month with a leading 0 for months 1–9.

(vi) *Sequence Number.* The number of the record in the file. This number should be right justified and the field 0 filled.

(vii) *Long (Short) Position.* Reportable long (short) position (if any) in the special account held on the contract market as of the close of business on the report date specified in the same record. Long (short) positions are reported in contracts except for the grains and soybeans. In the grains and soybeans, long (short) positions are reported in thousand bushels (000 omitted). The long (short) position is right justified with the field zero filled. Positions are reported on a net or gross basis in accordance with the provisions of paragraphs (d) and (e) of this section.

(viii) *Notices Issued (Stopped).* Delivery notices issued by the clearing organization of a contract market on behalf of a special account (stopped by the account) on the report date. Notices issued (stopped) are reported in contracts except for the grains and soybeans. In the grains and soybeans, notices issued (stopped) are reported in thousand bushels (000 omitted). Notices issued (stopped) are right justified, and the field zero filled.

(ix) *Purchases (Sales) of Futures in Connection with Cash Commodity Transactions.* The quantity of long contracts opened and/or short contracts liquidated (short contracts opened and/or long contracts liquidated) as a result of an exchange of futures for physicals. Purchases (Sales) are reported in contracts except for the grains and soybeans. In the grains and soybeans, purchases (sales) are reported in thousand bushels (000 omitted).

(h) *Correction of errors and omissions.* Corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series '01 forms or on computer printouts using a format and coding structure approved by the Commission or its designee.

12. Section 17.01 is amended by revising paragraphs (a) and (c) as follows:

§ 17.01 Special account designation and identification.

(a) *Designation of special account.* For the purpose of reporting futures information to the Commission and option information to a contract market, each futures commission merchant, member of a contract market and foreign broker shall assign a unique designator to each special account and shall report such account only by such designator. Provided, that the designator used to report futures information shall be numeric and further that the designator for options and the designator for futures shall not be changed or assigned to another account without prior approval of the Commission.

* * * * *

(c) *Transmittal of Form 102.* For futures, the report on Form 102 shall be submitted to the Commission in accordance with the requirements set forth in § 17.02. For options, the report must be submitted to the appropriate contract market in accordance with instructions from such contract market.

* * * * *

13. Section 17.02 is amended by deleting the current paragraph (b), revising the introductory paragraph and paragraph (a) and adding new paragraph (b). As revised § 17.02 reads as follows:

§ 17.02 Place and Time of Filing Reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed at the nearest appropriate Commission office as specified in paragraphs (a) and (b) below, wherein the times stated are eastern times for information concerning markets located in that time zone and central time for information concerning all other markets.

(a) For data submitted on compatible data processing media:

(1) At the Commission's New York or Chicago Regional Office if the information is supplied on magnetic tape or, at the Commission's New York, Chicago or Kansas City Regional Office if the information is supplied on magnetic diskette, at such time as the information is first available provided that it is received in the appropriate office no later than 10:30 a.m. on the business day following that to which the information pertains;

(2) At the Commission's Chicago Regional office if the information is submitted via dial-up data transmission at such time as the information is first available provided that it is received in such office not later than 11:00 a.m. on the business day following that to which the information pertains.

(b) For data submitted in hardcopy form pursuant to §§ 17.00(a), (h) or 17.01(a), at a Commission office in accordance with instructions by the Commission or its designee and, at such time as is specified below, provided that if a foreign broker or futures commission merchant, other than a clearing member, does not have an office in the city in which the appropriate Commission office is located, reports may be transmitted to the appropriate Commission office by mail no later than the day covered by the report.

(1) For reports submitted pursuant to § 17.00(a), not later than 9:00 a.m. on the day following that to which the information pertains; and

(2) For reports submitted pursuant to § 17.01, on the same day on which the account in question is first reported to the Commission.

14. Section 17.03 is amended by deleting the current § 17.03 and adding a new § 17.03. As revised § 17.03 reads as follows:

§ 17.03 Delegation of authority to the Director of the Division of Economic Analysis and to the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) and (b) of this section to the Director of the Division of Economic Analysis and the authority set forth in paragraph (c) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of

such Director as designated from time to time by the Director.

(a) Pursuant to § 17.00(a) the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) on series '01 forms or updated Commission supplied computer printouts upon a determination by the Director that such person technologically is unable to provide such information on compatible data processing media.

(b) Pursuant to §§ 17.00(h) and 17.02, the authority to approve the format and coding structure for error reports on computer printouts and to instruct and/or approve the time and Commission office at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.02; and

(c) Pursuant to § 17.00(a), the authority to approve the use of data processing media other than compatible data processing media as that term is defined in § 15.00(l) and the authority to approve a format and coding structure other than that set forth in § 17.00(g).

PART 18—REPORTS BY TRADERS

15. The authority citation for Part 18 is revised to read as set forth below and the authority citations following all the sections in Part 18 are removed:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

16. Section 18.04 is amended by revising paragraphs (a)(5), (a)(8), (a)(9), (b)(3) and (c)(6) as follows. The introductory text of paragraphs (a)–(c) are reprinted for the convenience of the reader.

§ 18.04 Statement of reporting trader.

(a) Information to be furnished by all traders in Part A of the Form 40 shall include:

* * * * *

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader.

* * * * *

(8) The names and locations (city and state) of persons who guarantee the futures or option trading accounts of the reporting trader or who have a financial interest of 10 percent or more in the reporting trader or the accounts of the reporting trader.

(9) The following information concerning other option or futures trading accounts which the reporting trader guarantees or other futures or option traders or accounts in which the reporting trader has a financial interest of 10 percent or more:

(i) The names of traders for whom the reporting trader guarantees accounts or in which the reporting trader has a financial interest;

(ii) The names of the accounts that the reporting trader guarantees or in which the reporting trader has a financial interest; and

(iii) The names and locations of the brokerage firms at which the accounts are carried

* * * * *

(b) Information to be furnished in Part B of the Form 40 shall include:

* * * * *

(3) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (*e.g.*, production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

* * * * *

(c) Information to be furnished in Part C of the Form 40 shall include:

* * * * *

(6) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (e.g., production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

* * * * *

PART 21—SPECIAL CALLS

17. The authority citation for Part 21 is added to read as set forth below and the authority citations following all the sections in Part 21 are removed:

Authority: 7 U.S.C., 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

18. Section 21.02 is amended by revising the heading and the introductory paragraph as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a contract market, introducing broker, or foreign broker, and, in addition, for option information each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

* * * * *

19. Section 21.02a is amended by revising the section heading and revising paragraph (a), (b)(1), (b)(3), (b)(4)(iv) and (b)(4)(x) as follows. The introductory text of paragraphs (b) and (b)(4) are reprinted for the convenience of the reader.

§ 21.02a Special calls for machine-readable information.

(a) Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market and foreign broker shall furnish to the Commission in accordance with paragraph (b) below the following information concerning accounts of traders owning or controlling such futures and/or option position, except for accounts carried by another futures commission merchant on a fully disclosed basis, as may be specified in the call:

(b) Except as provided in paragraph (c), the information shall be furnished in the following form and manner:

(1) Reporting Medium. Except as otherwise specifically approved by the Commission, information shall be provided on compatible data processing media.

* * * * *

(3) The required record description is as follows:

01 O-T-400A:
  05 O-T-RECORD-TYPE—PIC X(4) VALUE 400A.
  05 O-T-REPORT-DATE—PIC X(6).
  05 O-T-REPORTING-FIRM-NAME—PIC X(55).
  05 FILLER—PIC X(7).
  05 O-T-SEQUENCE—PIC 9(8).
01 O-T-410B:
  05 O-T-RECORD-TYPE—PIC X(4) VALUE 410B.
  05 O-T-ACCCOUNT-NUMBER—PIC X(48).
  05 FILLER—PIC X(20).
  05 O-T-SEQUENCE—PIC 9(8).
01 O-T-520E:
  05 O-T-RECORD-TYPE—PIC X(4) VALUE 520E.
  05 O-T-COMMODITY-ID—PIC X(6).
  05 O-T-DELIVERY-OR-EXPIRATION-MONTH—PIC X(4).
  05 O-T-PUT-OR-CALL-OPTION—PIC X.
  05 O-T-STRIKE-PRICE—PIC 9(8).
  05 O-T-OPEN-LONG-POSITION—PIC 9(8).
  05 O-T-OPEN-SHORT-POSITION—PIC X(8).
  05 FILLER—PIC X(33).
  05 O-T-SEQUENCE—PIC 9(8).

(4) *Field Definitions.* Field definitions for each record are as follows:

* * * * *

(iv) *Account Number.* A unique identifier for each account reported to the Commission under the § 21.02a call. This can be any sequence of alphanumeric characters not to exceed 48 characters which are left justified in the field.

* * * * *

(x) *Open Long (Short) Positions.* Total number of long (short) contracts in the commodity specified in the call that are open on the firm's books for a particular account as of the end of the trading day specified in the call. The field should be zero filled with right justified integers from 0 to 99999999.

Issued in Washington, DC on January 31, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-2588 Filed 2-6-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 178

[T.D. 86-18]

Customs Regulations Amendment to Listing of OMB Control Numbers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the clearance number issued by the Office of Management and Budget (OMB), necessary for certain information collection requirements included in a recent interim amendment to the Customs air commerce regulations. The interim amendment stated that an application for clearance was submitted to OMB. That office has since approved the regulation and issued the clearance number which appears later in this document.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Regulations Control and Disclosure Law Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

Part 6, Customs Regulations (19 CFR Part 6) was amended on an interim basis by T.D. 86-12, published in the **Federal Register** on February 3, 1986 (51 FR 4161). The amendment created a new § 6.12a, Customs Regulations (19 CFR 6.12a), to enhance security in certain designated areas of international airports in the U.S. The major thrust of the regulations is to define a "Customs security area" which may only be entered by airport personnel wearing a Customs approved and issued identification strip or seal on an existing airport identification card. A strip or seal is issued only after an airport employer attests, in writing, that a background check has been conducted on an employee seeking access including, at a minimum, references and employment history necessary to verify employee representations regarding employment in the preceeding five years. Thus, the regulations place upon the employer the burden of conducting an investigation and making a written submission to Customs concerning that investigation.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C 3501 *et seq.*) established policies and procedures for controlling paperwork burdens imposed on the public by federal agencies. Pursuant to this Act, by a document published in the **Federal Register** on March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) promulgated rules implementing the Act. The OMB rules are codified at 5 CFR Part 1320 *et seq.*

One aspect of OMB's oversight function is the review and approval of information collections. Generally, information collections include any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. OMB analyzes such requests for three basic requirements. First, the collection of information must be necessary for proper performance of the agency functions. Second, the request for information or records must not duplicate information otherwise accessible to the agency. Third, the information must have practical utility.

When an information collection is approved by OMB, it is issued a control number. The control number provides a simple and effective way to inform the public that a particular information collection has been approved by OMB pursuant to the Paperwork Reduction Act.

In the February 3, 1986, interim regulation, Customs stated that the amendment was subject to the Paperwork Reduction Act, and that an application for approval was submitted to OMB. OMB was able to quickly review the information collection requirements included in T.D. 86-12, and has issued a control number. This document amends the Customs Regulations by including that control number in the list of previously issued numbers for Part 6, Customs Regulations (19 CFR Part 6), which appears in Part 178, Customs Regulations (19 CFR Part 178).

E.O. 12291, Regulatory Flexibility Act, Inapplicability of Public Notice Requirement

This document merely amends a listing of the status of other already published regulations. Therefore, the requirements of E.O. 12291, the Regulatory Flexibility Act, and the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 552) are not applicable.

List of Subjects in 19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

Part 178, Customs Regulations (19 CFR Part 178), is amended as set forth below:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

§ 178.2 Listing of OMB control numbers.

* * * * *

19 CFR section	Description	OMB control No.
§ 6.12a	Customs security areas in international airports.	1515-0152

Dated: February 4, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-2746 Filed 2-6-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of Para-Fluorofentanyl into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice to temporarily place para-fluorofentanyl into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provision of the CSA. This action is based on a finding that the scheduling of this substance in Schedule I is necessary to avoid an imminent hazard to the public safety. This action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacturing, distribution and possession of para-fluorofentanyl.

EFFECTIVE DATE: On March 10, 1986, para-fluorofentanyl will be subject to Schedule I control.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necesssary to avoid an imminent hazard to the public safety. A substance may be scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)). In making a finding of an imminent hazard to the public safety, the Attorney General is required to consider only those factors set forth in paragraphs (4) the history and current pattern of abuse, (5) the scope, duration and significance of abuse, and (6) what, if any, risk there is to the public health of section 201(c) of the CSA (21 U.S.C. 811(c)).

House Report 98-835 which accompanied Pub. L. 98-473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called 'designer drugs', new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." Para-fluorofentanyl is an analog of fentanyl, a Schedule II synthetic narcotic analgesic, and as such is the type of substance which Congress intended to subject to the emergency scheduling authority as an imminent hazard to the public safety.

A series of analogs of the Schedule II narcotic analgesic, fentanyl, have been clandestinely produced, distributed and abused primarily in California since late 1979. The first of these analogs identified was alpha-methylfentanyl, sold on the street as "China White" or "synthetic heroin." Alpha-methylfentanyl was associated with over 20 narcotic overdose deaths during the period 1980-1982. Using the traditional scheduling process pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)), DEA placed alpha-methylfentanyl into Schedule I of the CSA effective September 22, 1981 (46 FR 46799). Since the control of alpha-methylfentanyl, DEA laboratories have identified other fentanyl analogs clandestinely produced and distributed in California. DEA used its emergency scheduling authority for the first time when 3-methyl-fentanyl, a particularly potent fentanyl analog, was temporarily placed into Schedule I of the CSA effective April 25, 1985 (50 FR 11690). Subsequently, after their identification in the illicit drug traffic by DEA laboratories, the substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, benzylfentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl, thenylfentanyl and thiofentanyl were temporarily placed into Schedule I effective November 29, 1985 pursuant to the emergency scheduling provision of the CSA (50 FR 43698-702). Yet another fentanyl analog, para-fluorofentanyl, has been identified in submissions to a DEA laboratory.

Chemically, para-fluorofentanyl is N-[1-2-phenylethyl)-4-piperidyl]-N-(4-flourophenyl)propanamide. Para-fluorofentanyl behaves as a typical morphine-like compound in several pharmacological tests in the mouse and rat. It has a 90-minute duration of analgesic action and it is estimated to be about 100 times as potent an analgesic as morphine. Para-fluorofentanyl substitutes completely for morphine in morphine-dependent monkeys at several doses.

DEA laboratories have identified para-fluorofentanyl in drug evidence submissions from the East Coast and West Coast. Para-fluorofentanyl was first identified by a DEA laboratory in a two-ounce submission from Los Angeles, California in 1981. Since the fall of 1985 DEA laboratories have identified substantial quantities of para-fluorofentanyl in several exhibits associated with a clandestine laboratory producing this substance in Delaware.

Para-fluorofentanyl's morphine-like pharmacological profile and high potency make it likely that it will be associated with the same type of health hazards as other fentanyl analogs. Since January 1984 there have been at least 60 overdose deaths associated with

fentanyl analogs. Due to the difficulty in detecting the minute quantities of fentanyl analogs found in body fluids, it is likely that some injuries and deaths associated with these substances go unreported.

There is no accepted medical use for or commercial manufacturer of para-fluorofentanyl. The use of clandestinely produced narcotic substances poses greater health and safety risks than those attendant to the use of traditional narcotics. The identity, purity and concentration of the active ingredients in most cases are unknown or at best inconsistent. The relatively high potency of para-fluorofentanyl (100 times morphine) necessitates very small doses. Mixing the active ingredients with diluents to obtain appropriate and uniform doses is extremely difficult. Thus, there is a high risk of overdose.

The incidence of fentanyl analog use among narcotic addicts in California has been estimated at 10 to 20 percent. Fentanyl analogs are primarily administered intravenously by narcotic addicts. The pattern of abuse of fentanyl analogs parallels that of heroin and other narcotics.

The above data show that the production, distribution and use of fentanyl analogs continue to pose a very serious hazard to the public safety, particularly in California. With the identification of substantial quantities of para-fluorofentanyl in forensic laboratory submissions from Delaware, it appears that the high potential for the spread of fentanyl analogs to areas outside of California has been realized. Although para-fluorofentanyl has not been specifically associated with injuries or deaths at this time, it is likely to produce the same health and safety. risks as those associated with the use of other potent fentanyl analogs.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h) and 28 CFR 0.100, the Administrator of DEA has considered the following factors relative to making a determination of whether para-fluorofentanyl poses an imminent hazard to the public safety:

(1) Its history and current pattern of abuse,

(2) The scope, duration and significance of abuse, and

(3) What, if any, risk there is to the public health.

Based on a consideration of these factors and other relevant information, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling para-fluorofentanyl in Schedule I of the CSA, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Secretary of the Department of Health and Human Services of his intention to temporarily place para-fluorofentanyl into Schedule I of the CSA. Comments submitted by the Secretary in response to this notification, including whether there is an exemption or approval in effect for para-fluorofentanyl under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration by the Administrator before the notice becomes effective.

Pursuant to the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator hereby orders that on March 10, 1986, N-[1-(2-phenylethyl)-4-piperidyl]-N-(4-fluorophenyl)propanamide (para-fluorofentanyl), its optical isomers, salts and salts of isomers be placed into Schedule I of the CSA (21 U.S.C. 801 et seq.) unless the Administrator gives notice in the **Federal Register** that this order is rescinded prior to March 10, 1986.

PART 1308—[AMENDED]

For the reasons set forth above, 21 CFR 1308.11(g) is amended as follows:

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11(g)(13) is added to read as follows:

§1308.11 Schedule I.

* * * * *

(g) * * *

(13) N-[1-(2-phenylethyl)-4-piperidyl]-N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts and salts of isomers	9812

* * * * *

The temporary placement of para-fluorofentanyl into Schedule I, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)), will expire at the end of one year from the effective date of this order. If a rulemaking proceeding to schedule para-fluorofentanyl under the CSA has been initiated pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)) and is pending, the temporary scheduling of that substance may be extended for up to six months.

This action is not a formal rulemaking procedure as set forth in the Administrative Procedures Act (5 U.S.C. 551–559) and the opportunity for a hearing on the record is not required. Nevertheless, the Administrator affords the opportunity for comments to be submitted concerning this matter.

Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: Federal Register Representative.

All regulations and criminal sanctions applicable to Schedule I substances are effective on March 10, 1986, with respect to para-fluorofentanyl. However, individuals registered with DEA in accordance with Part 1301 or 1311 of Title 21 of the Code of Federal Regulations and who currently possess para-fluorofentanyl may continue to do so pending DEA's receipt of an amended registration no later than April 8, 1986.

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports para/fluorofentanyl or who engages in research or conducts instructional activities with respect to this substance or who proposes to engage in such activities must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. Security. Para-fluorofentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels and labeling for commercial containers of para-fluorofentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. Quotas. All persons required to obtain quotas for para-fluorofentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. Inventory. Every registrant required to keep records and who possesses any quantity of para-fluorofenfanyl shall take an inventory, pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of this substance on hand.

6. Records. All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding para-fluorofentanyl.

7. Reports. All registrants required to submit reports pursuant to §§ 1304.37–1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding para-fluorofentanyl.

8. Order Forms. All registrants involved in the distribution of para-fluorofentanyl shall comply with the order form requirements of § 1305.01–

1305.16 of Title 21 of the Code of Federal Regulations.

9. Importation and Exportation. All importation and exportation of para-fluorofentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. Criminal Liability. Any activity with respect to para-fluorofentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring after March 10, 1986, is unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of para-fluorofentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of substances with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of para-fluorofentanyl in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

Dated: February 3, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2731 Filed 2–6–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Director's Findings on the Status of Kansas' Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On January 21, 1981, the State of Kansas received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). All six conditions were removed on April 14, 1982, and full approval was granted. On March 11, 1983, the Director, OSM, notified the Governor of Kansas that OSM had reason to believe that serious problems existed and were adversely affecting the implementation of Kansas' approved regulatory program. After a public hearing and opportunity for public comment, the Director finds that while Kansas was experiencing some difficulty in adequately implementing certain aspects of its approved program, corrective measures have been initiated which will ensure that the Kansas program is implemented in accordance with the State program as approved by the Secretary of the Interior.

The action initiated under the provisions of 30 CFR Part 733 is now being terminated. The Director, OSM, will continue to provide the State with assistance and guidance as necessary to ensure that the Kansas permanent regulatory program continues to be implemented as approved by the Secretary. OSM will monitor the State's actions through its ongoing oversight program.

This notice sets forth the Director's detailed findings regarding this action and the status of corrective actions initiated by the State of Kansas.

EFFECTIVE DATE: March 10, 1986.

ADDRESSES: Copies of the Director's decision and the Administrative Record documents referenced in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343–4855.

Office of Surface Mining, Kansas City Field Office, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, Pittsburg, Kansas; Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT:

Raymond Lowrie, Assistant Director, Western Field Operations, Office of Surface Mining, Suite 1702, Executive Tower Inn, 1405 Curtis Street, Denver, Colorado 80202; Telephone: (303) 844–2459

William Kovacic, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program to administer and enforce the permanent regulatory program under SMCRA. All six of the conditions were removed on April 14, 1982.

On March 11, 1983, the Director, OSM notified the Governor of Kansas that he had reason to believe that the State, through the Mined Land Conservation and Reclamation Board (MLCRB or the Board) was not adequately implementing its approved program to regulate surface coal mining and reclamation operations (KS–247). The Board is a duly constituted agency under the direction of the Kansas State Corporation Commission (KSCC) which is designated to administer the regulatory program. The Chairman of the KSCC also serves as the Chairman of the Board. The Board represents multiple interests, and its members include heads of State agencies, employees and operators of surface coal mines, and representatives from the general public. The Board's staff, headed by an Executive Director, implements the State program.

The Director, OSM, cited problems in Kansas' program implementation in several areas including (1) permitting, (2) inspection and enforcement, (3) administrative procedures and records, (4) civil penalty assessment, (5) bond release and (6) staffing. A more detailed account of the Director's concerns can be found in the May 31, 1983 **Federal Register** (48 FR 24073).

On April 14, 1983, the Governor responded to the Director's March 11, 1983 letter by providing assurances that Kansas would correct the deficiencies outlined in the Director's letter (KS–258).

On May 6, 1983, the State requested an informal conference with OSM under the provisions of 30 CFR 733.12(c) (KS–250). The Director agreed to Kansas' request, notified the public (48 FR 24073) and held an informal conference with Board officials and the KCC on June 16, 1983, in Pittsburg, Kansas. (See KS–254 for conference transcript.)

At the informal conference, OSM requested that Kansas provide additional information on many of OSM's concerns. Kansas submitted additional written information on July 30, 1983 (KS–255), August 30, 1983 (KS–257), and September 30, 1983 (KS–259).

In August 1983, OSM's Annual Report on Kansas' Permanent Program was completed and submitted to Congress. The report contained an evaluation of the performance of the Kansas Mined Land Conservation and Reclamation Board in implementing its approved program for the period from April 1, 1982 to April 30, 1983 (KS–290).

A meeting was held between OSM and the State on November 10, 1983, to discuss OSM's concerns and the State's progress in resolving issues identified in the annual evaluation report. (KS–260)

On November 17, 1983, after evaluating Kansas' performance for the

period of eight months from the time he wrote of his concerns to the Governor, the Director announced in the **Federal Register** (48 FR 52297) that he still had reason to believe that Kansas might not be adequately implementing its approved State program and scheduled a public hearing and public comment period (KS–262). In addition to announcements of the public hearing in the **Federal Register**, announcement were made in a newspaper of general circulation in the State of Kansas and in two newspapers serving population centers in the State's coal region. Also, copies of the **Federal Register** notice were made available to citizens having expressed an interest in the State's enforcement of its regulatory program (and whose names were available at OSM's Kansas City Field Office), all coal operators in the State, and environmental groups.

The Director's decision to hold a public hearing and solicit public comments was based on unresolved concerns in the following areas: permitting, inspection and enforcement, administrative procedures and records, civil penalty assessment, bond release and staffing. A more detailed account of the Director's concerns regarding the status of Kansas' program can be found in the text of the announcement of the public hearing (48 FR 52297).

On December 16, 1983, OSM conducted a public hearing in Topeka, Kansas regarding the status of the Kansas program. In addition to presenting testimony at the hearing, the KCC and the Board submitted to OSM additional information concerning issues raised previously by OSM (KS–264, 279, 281, and 283). Also, during the course of the hearing, OSM requested that the State provide additional information addressing many of OSM's concerns. The comment period closed December 30, 1983. A copy of the transcript of the public hearing was placed in the Administrative Record (KS–263).

After December 30, 1983, OSM received additional material addressing the status of the Kansas permanent regulatory program. This material consisted of information submitted by the State, meeting notes, telephone conservation records and several documents generated by OSM. The additional material was included in the Administrative Record (KS–267 through KS–319). Therefore, OSM reopened the comment period for an additional 15 days, April 30, 1984 to May 15, 1984, to allow the public sufficient time to review and comment on the above documents (49 FR 18296).

During the period between November 17, 1983, and May 15, 1984, a number of comments were received from the public. All written comments have been made a part of the Administrative Record, either by inclusion in the transcript of the public hearing, or as written comments received by OSM on or before the close of the comment period. Also, all documents on file in the OSM Kansas City Field Office relating to the Kansas permanent regulatory program since March 11, 1983, obtained in the ordinary course of OSM business from the public, OSM Kansas City Field Office employees, the KCC, the Board or other government agencies, excluding internal memoranda (including telephone call notes, meeting notes, decisionmaking documents, and advice of counsel) have been placed in the Administrative Record.

On January 23, 1985, OSM's Annual Report on the Kansas Permanent Program for the period from April 1, 1983 to March 31, 1984 (KS–333) was completed and submitted to Congress. On March 25, 1985, OSM reopened the public comment period for an additional 30 days for comment on material received since the close of the April 30, 1984 comment period. No additonal comments were received.

All Kansas Administrative Record documents from KS–247 (March 11, 1983) through KS–368 (December 19, 1985) and the 1985 Annual Report which includes information based on OSM findings concerning the actions taken by Kansas to implement its approved regulatory program during the period April 1, 1984 through April 30, 1985 and being considered in this decision.

II. Director's Findings on the Status of Kansas' Permanent Regulatory Program

On the basis of the record described above, the Director makes the following findings pursuant to Section 521 of SMCRA and 30 CFR 733.12.

A. Administration

The Director's letter of March 11, 1983, indicated a concern that most of the problems with the Kansas program appeared to stem from a lack of commitment by the Board to enforce Kansas' program and the failure to develop and implement effective procedures and practices to accomplish this task.

Since the April 14, 1983 letter from the Governor in response to the Director's letter, Kansas has made several changes to improve the administration of the program. On May 17, 1983, the Governor appointed a new Chairman of the KSCC (who also serves as Chairman of the Board). A new Executive Director was hired effective December 8, 1983. The State has also sought and obtained additional resources to administer the approved program. Staffing is discussed in detail below under B. *Permitting/Bonding.*

Other changes made by the Board to improve program administration include the development of revised memorandums of understanding (MOUs) with other State agencies for permit review assistance; the updating of regulations; revising and adjusting inspection procedures; the development and implementation of a civil penalty filing and tracking system; the development and implementation of tracking systems for citizen complaints, ten day notices, and bond activity; and the development of a permit manual for use by operators and procedures for permit review. These procedures and systems are further discussed under the appropriate subject headings below.

Summary Administration Finding

The Director finds that the management changes made in the KSCC and Board staff, the improvements made in existing administrative systems and the development of additional administrative systems evidence the State's resolution of the problems associated with this portion of the program.

B. Permitting/Bonding

1. *Staffing:* When the Secretary approved the Kansas program on January 21, 1981, he noted in the **Federal Register** approval document that the Kansas legislature had not yet approved the proposed staffing and budget plan for the Kansas regulatory authority. That plan called for a staffing level of 15 full-time positions, including approximately five full-time equivalent (FTE) permitting positions, to administer the State's regulatory program. The Secretary approved the program based on Kansas' assurance that, until such time as the legislature approved the staffing plan, the State would employ the following measures: (1) Contract with qualified consulting firms to provide needed technical support; (2) utilize the expertise of other State agencies; and (3) enter into an agreement with OSM under the Intergovernmental Personnel Act (IPA) whereby OSM would provide a full-time technically qualified person to Kansas.

In March 1983, there was only one technically trained person on the Kansas staff available part-time for permitting. In its March 11, 1983 letter, OSM indicated its concern that the Board's approved program staffing plan was not being met and that this might be a contributing factor to the problems

associated with permit review. OSM noted that the lack of technical expertise was particularly evident in the areas of geology, engineering and agronomy. In the Director's letter, OSM required that the Board identify its plans to fill vacant technical positions needed to ensure adequate permit review. At the informal conference, the State indicated that legislative action would be necessary to authorize additional positions and funding.

Since January 1984, the Board has filled five new positions approved through legislative action. These positions included an engineer and reclamation technician with a soils and agronomy background. Individuals with these particular backgrounds are well suited to address the identified permitting deficiencies related to hydrology, structures, soils and revegetation. OSM's evaluation of Kansas' permitting activities during 1985 noted improvement in these areas and OSM believes that the improvement was related in part to the additional staff.

Kansas also informed OSM that an engineer was detailed to the regulatory authority from another State agency for a minimum of one year to work on the permitting manual. That individual will be working with the Kansas regulatory program staff in Topeka until Spring 1986.

The increase in staff resources devoted to the Kansas program during 1984 is reflected in the FY 85 Administrative and Enforcement Grant. The staff allocations are:

	FTE [1]
Regulatory	7.75
Loaned engineer (permitting)	1.00
AML	5.25
Total	14.00

[1] Full-time equivalent.

The 7.75 FTE for the regulatory program includes 2.31 FTE for the permitting function, or 3.31 FTE when the loaned engineer is included.

In the past, because of the lack of technical expertise the Board's staff was responsible only for determining if permit applications were complete, relying upon ten State agencies holding memorandums of understanding (MOU) with the MLCRB to determine the technical adequacy of an application. Seven of these State agencies are represented by members on the Board. These Board members were to act as liaison between their respective agencies and the Board to ensure that interagency review of permit applications was conducted and to be available for a final review when the Board takes action on permit applications. Under the MOUs in existence prior to January 1, 1985, the necessary technical review, and interdisciplinary review of permit applications was not conducted. Only four of the ten State agencies' responses on technical adequacy could be documented in MLCRB's permit files during OSM's 1983–84 oversight evaluation. A review of these responses showed little evidence that a substantive technical review in those agencies was conducted.

The Executive Director initiated action to revise and strengthen the MOUs. These MOUs have been updated to require that cooperating agencies provide information necessary for the MLCRB to make its written findings. The Board has discontinued three of the MOUs. They were with the State Energy Office, State Department of Economic Development and the State Biological Survey. The Board added one MOU by entering into an agreement with the State Fire Marshal. The eight MOUs currently in effect are between the MLCRB and the State Fish and Game Commission, State Division of Water Resources, State Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission, and State Fire Marshal.

2. *Permit Processing:* In its March 11, 1983 letter to the Governor, OSM noted that the Board was not conducting adequate completeness and technical reviews of the permit applications and was not preparing adequate written findings. Kansas had no detailed procedures for permit review and had not been able to issue proper permits as required by State and Federal laws and regulations. This was evident by the technical deficiencies identified in the approved permits reviewed by OSM.

As a result of a preliminary review conducted by OSM during December 1983, of two permits issued on June 9, 1983, and October 13, 1983, OSM found that in many instances the technical documentation in the applications did not support the written findings. In addition, OSM found that major technical inadequacies existed in areas of vegetation, prime farmland, hydrology, fish and wildlife, and soils.

The oversight review of Kansas' permitting process conducted by OSM as part of the 1984 oversight review conducted during February 1984 (KS–316), confirmed OSM's previous findings and indicated continued inadequate technical reviews and analyses of permit applications. The permits reviewed by OSM were found to be incomplete, with technical deficiencies similar to those identified during the previous OSM oversight review conducted in February 1983 and the preliminary review conducted in December 1983. The deficiencies were generally the result of a lack of descriptive information in the permit application. OSM found the following permitting problems based on re-review of the three previously issued permits:

- Approved permits on file were not complete and did not contain information required by the approved State program.
- Some application requirements were either inadequately addressed, or were based on unrepresentative data. The Board's written findings, when based on this inadequate information, were not accurate. Without the required descriptive baseline information the MLCRB's staff could not properly assess the merits of the reclamation plan. The baseline deficiencies identified in the permits reviewed dealt with soils, prime farmland, vegetation, hydrology, and fish and wildlife, and taken together indicated a lack of adequate interdisciplinary review prior to permit approval.
- As a result of technical deficiencies, the permits reviewed did not correlate the operation plan to the reclamation plan so as to prevent or mitigate adverse environmental effects.
- While there was evidence that the MLCRB was processing coal exploration notices, there was not sufficient documentation in the files to assess how the notices were being processed. Separate files were not maintained for coal exploration notices. The MLCRB had not required companies to submit the necessary information as required by Kansas regulations. There was no documentation indicating that the MLCRB considered the amount of proposed disturbance during exploration activities.

The Board, in response to a request to identify its procedures for technical review and for preparing written findings on applications, submitted a letter dated September 30, 1983 (KS–259) which explained the permit review process, included a detailed application review checklist used to determine completeness, and outlined assignments for staff responsible for application review. The State's response also included flow charts that described the review process for coal exploration, experimental practices applications and lands unsuitable for mining petitions.

Kansas developed a manual for preparing, reviewing and tracking permits. The manual was completed in May 1985. The State has begun to use

the manual for permit application preparation and completeness review. In December 1984 the MLCRB approved proposed regulation designed to clarify and strengthen permit and bonding requirements and comply with Federal regulations. The proposed regulations were approved by OSM (50 FR 47216) on November 15, 1985.

Since May 1984 and at OSM's request, Kansas has re-reviewed three previously issued permits for technical adequacy. The coal operators involved have been advised of permit deficiencies found during the review and were given until March 31, 1985, to correct them. The State has received and is currently reviewing follow-up data received from two of the three operators. The remaining operator is collecting the additional information required by the State.

The MLCRB approved one permit application during the 1985 evaluation period of April, 1, 1984 through April 30, 1985. OSM reviewed the permit application in conjunction with a review of MLCRB's exploration approvals, permit revision approvals, and newly adopted permit review procedures. The results of that review identified improvement in MLCRB's handling of exploration applications, prime farmland determinations, and fish and wildlife determinations; however, the permit area was small and did not provide sufficient basis for OSM to fully evaluate Kansas' permitting performance in all technical areas. In addition, separate exploration permit files have been established and are now acceptable.

OSM has re-examined administrative deficiencies identified in previous oversight reports. The State has either corrected those deficiencies or taken steps to correct them. Kansas has taken positive action to closely monitor the review process for accuracy, compliance, and quality assurance. As previously mentioned, new memorandums of understanding have been developed for all State support agencies currently involved in the permit review process to improve MLCRB permitting operations. A new permit application manual has been developed and put into effect which will improve the quality of initial permit application submissions, and enhance the review process.

3. *Review of Existing Permits:* The March 11, 1983 letter requested that Kansas provide to OSM a summary of the status of all permit approval actions taken since January 21, 1981, and a schedule for a technical review of those permits, including a timetable for revisions necessary to bring the permits into compliance with Kansas regulations.

In 1983, Kansas had a total of 23 permanent program permits of which 17 were active and six were inactive, as well as inactive interim program permits. Since November 1983, Kansas has reviewed 16 of the 17 active permits for completeness. The remaining permit is scheduled for review in early 1986. The permittees have been notified by the State of permit deficiencies and have been advised to provide necessary additional information. The State has received much of the required information and is currently reviewing the follow-up data submitted by the permittees.

As a component of the current technical assistance program, representatives of the State of Kansas, the OSM Western Technical Center, and the Kansas City Field Office analyzed those permits previously scheduled for a completeness review to determine the present need for complete technical reviews.

As a result of the above effort a specific review was established for each permit still being actively mined and/or reclaimed. The technical review will concentrate on those deficiencies which could have a negative environmental impact.

In a letter dated November 27, 1985 (KS-366), Kansas agreed to re-review for technical adequacy 10 current permits. These 10 permanent program permits are for 4 operations actively mining in Kansas and for 1 company that has recently filed for Chapter 11 proceedings in Federal Bankruptcy Court. If any permit deficiencies are identified, written notification of the deficiencies in the form of a Board Order will be provided to operators pursuant to the authority of the Board to review and require reasonable revision or modification of permit provisions. The order will contain a definite date for operator response which will vary depending upon the types of deficiencies which were cited.

If a timely response is not filed, absent a good faith justification, the operator will be issued a notice of violation pursuant to K.A.R. 47-15-1a for failure to comply with the State act, and regulations, and 15 day deadline for compliance will be set. Kansas has committed to have all deficiencies properly addressed by the end of calendar year 1986.

4. *Bond Release:* In its March 11, 1983 letter, OSM expressed concern that the Board was releasing performance bonds for operations that did not meet the required performance standards. OSM requested that the Board provide procedures for releasing performance bonds including documentation showing that all performance standards have been met, and provide assurances that no bonds will be released prematurely.

Kansas assured OSM by letter dated August 30, 1983, of the Board's policy to follow the requirements of Kansas regulation 47-8-9, incorporating 30 CFR 807.11 (May 8, 1980) in processing interim as well as permanent program bond release requests. This assurance satisfied OSM's request. The MLCRB did not release any interim program bonds during the 1984 oversight period. During the 1985 evaluation period, the MLCRB approved partial bond releases on two permanent program permits and two interim permits. OSM inspected one operation where a partial permanent program bond was released and found that all performance standards were met and release was made properly. OSM has held specific discussions with Kansas concerning requirements for interim permit bond releases and further discussions and joint field evaluations are planned to insure continued adequate releases.

Summary of Permitting/Bonding Findings

In his letter of March 1983, the Director had found that the technical adequacy of the permits the Board has issued and the completeness of the information in the applications was generally inadequate. The Board had failed to adequately reevaluate existing deficient permits for technical adequacy and require appropriate modifications. The Director now finds that the State has shown the capability to correct these errors by conducting reviews of the active permits, requiring additional information from permittees, increasing its permitting staff and realigning existing responsibilities to address the previously identified permitting deficiencies.

The Director also finds that the State has made progress in improving its permit review process, most notably by development of an improved permit review system and a permit preparation and review manual. The Director finds that the quality of the Board's review for technical adequacy, analysis of technical components supporting written findings, and timeliness of reviewing existing permanent program permits, has improved. Therefore, the Director finds that Kansas has demonstrated its capability to implement, administer, maintain, and enforce the permitting requirements of the approved program and has corrected or is in the process of

correcting previously identified deficiencies.

OSM will continue to provide assistance to ensure that Kansas continues to implement its permitting responsibilities in accordance with its approved program. OSM will continue to monitor the Kansas permitting program through oversight and will reevaluate the need for assistance periodically.

Bond Release

The Director finds that Kansas has identified procedures for processing bond release requests and provided assurances that they will be followed. The Director has concluded that although there has been relatively little recent bond release activity with which to judge compliance, the State has demonstrated its capability to meet bond release requirements.

C. Inspection and Enforcement

1. *Inspection Frequency and Completeness of Inspections:* In its March 11, 1983 letter, OSM expressed concern that, while State inspection reports indicated that the State appeared to be meeting and even exceeding the required frequency for inspections, such a high frequency level could mean that the quality of the inspections was being compromised or the number of inspections was being improperly calculated. The State program requires an average of one complete inspection per calendar quarter and an average of one partial inspection per month. A complete inspection can substitute for one of the partial inspections. Thus, the program effectively requires four complete and eight partial inspections per year (1 complete and 2 partial inspection per quarter) on each inspectable unit. A complete inspection is an on-site review of compliance with all permit conditions and program requirements. A partial inspection is a review of compliance with some of the program requirements.

During the first year of primacy, Kansas reported that it had conducted 733 complete inspections (344 were required) and thus had exceeded its mandated inspection frequency. However, OSM found that the number of the complete inspections being reported had been improperly "double counted" by the State. Kansas used an inspection system based on inspector specialty in which each of two State inspectors reviewed different performance standards on a particular site at the same or different times. Each of these inspections was counted and reported by the State as a "complete" inspection. OSM secured a commitment from Kansas to correct the practice of double-counting complete inspections as of December 1, 1983. The Executive Director of the MLCRB agreed to require the two inspectors to inspect the same site on the same date, or as near the same date as possible.

Following the agreement to resolve this problem, OSM recalculated Kansas' inspection frequency since March 31, 1983, to eliminate the double-counting and present a more accurate summary of Kansas' complete inspection frequency. Only those cases in which both inspectors inspected the same site within 30 days were counted as a complete inspection.

The number of inspectable units in Kansas ranged from 68 in April–June 1983 to 79 in January–March 1984. Calculated by calendar quarter, the frequency of Kansas' complete inspections showed a steady increase in frequency from a low of 59 percent during April–June 1983 to a high of 84 percent during January–March 1984. This increase indicates a general level of improvement. However, when inspection frequency was calculated by individual inspectable units, 46 of the inspectable units, or over 50 percent, did not receive the required number of complete inspections during the year.

During January–March 1984, OSM found that of the 79 inspectable units, 66 units received a complete inspection for an inspection frequency of 84 percent. The remaining 13 units received only one of the two required partial inspections and, therefore, were not counted as receiving a complete inspection. OSM found that the average time between the two site visits required for a complete inspection was an acceptable 10.3 days.

Kansas previously exceeded the required number of partial inspections. The approved program requires eight partial inspections per inspectable unit per year. Kansas conducted an average of 15.7 partial inspections per unit from April 1, 1983 through March 31, 1984, which is almost double the required frequency. This excess of partial inspections and shortage of complete inspections suggested that Kansas was not properly allocating its inspection resources.

On September 1, 1984, the Kansas Director instituted a completely revised inspection system. One inspector is now responsible for conducting all aspects of a complete inspection on a mine site. Kansas also revised the way it counts its inspectable units. By eliminating the counting of permit increments as separate inspectable units, the number of inspectable units was decreased from a high of 83 in 1984 to 50. The new inspection system has eliminated time-consuming double inspections, reduced paperwork, and has improved the quality of complete inspections.

Since the initiation of the new inspection procedure, Kansas has maintained an inspection frequency of at least one inspection per inspectable unit each month. During the period of September 1, 1984 through April 30, 1985, Kansas' inspectors conducted the required number of complete and partial inspections on 100 percent of the inspectable units for both interim and permanent program permit areas. There were no units that lacked the required number of inspections.

2. *Inspection Reports:* As noted in the Director's March 11, 1983 letter, during the 1983 oversight review, OSM found that of 132 inspection reports reviewed, only four contained sufficient information to identify the report as that of a complete inspection. Conditions of the permit area and compliance with applicable performance standards were generally not addressed. These deficiencies continued from April through November 1983. No improvements were noted in the Kansas inspection reports until December 1983, when Kansas developed two new inspection report formats, the "inspection report" and the "hydrologic report".

OSM reviewed from a total of 690 Kansas inspection reports a sample of 49 inspection reports and 49 hydrology reports written from January through May 1984. The reports taken together constituted 49 complete inspections. The checklists included on both inspection report forms cover all the performance standards required to be reviewed during complete inspections. Compared to the situation which existed prior to December 1983, Kansas made improvements in preparing complete inspection reports. During the sample review OSM found that the checklist was completed on 98 percent of the reports. The narrative section of the report was considered adequate in 71 percent of the reports. The narratives that were found to be deficient lacked complete descriptions of mining or reclamation activities. Of the sample, 98 percent of the complete inspection reports did, however, contain sufficient information to identify the report as that of a complete inspection. A review of all 137 complete inspection reports submitted to OSM from September 1, 1984 through March 31, 1985 found that 100 percent of the checklists were completed and 98 percent of the narratives described mine site conditions adequately to identify the

report as that of a complete inspection. Inspection reports were adequate to support any citations that were issued as a result of the inspector's findings. The improvements noted in complete inspection reports indicate that Kansas has corrected inspection report deficiencies identified by the Director.

3. *Enforcement During Field Inspection:* On March 11, 1983, OSM notified Kansas that State inspectors had generally failed to take appropriate enforcement actions when violations were observed, and that OSM oversight inspections resulted in the discovery of an inordinate number of observed violations that were not cited by Kansas inspectors.

In response to OSM concerns, the MLCRB Executive Director issued a directive to Kansas inspectors on September 29, 1983, stating that, while past policy regarding issuance of notices of violation (NOV) has been less stringent than the regulations require, an effort must be initiated to ensure that compliance with the regulations is carried out.

In September 1983, Kansas requested assistance from OSM for training to improve the level of inspector proficiency. The training was provided in October 1983. Major topics included in the training were (1) inspection process, (2) permit review, (3) on-site inspection, (4) haul roads, (5) topsoil, (6) revegetation, (7) blasting, (8) enforcement procedures, and (9) special categories of mining.

During the 1984 oversight period, OSM found that the State cited violations at approximately 50 percent of the rate that OSM observed violations. This was an improvement over previous results, but Kansas inspectors still did not cite all observed violations.

A review of all 27 NOVs issued by the State during the 1985 review period indicated that Kansas inspectors are citing violations at a rate which is approximately 80 percent of the rate that OSM observed violations in Kansas. Due to the low number of ten-day notices (5) issued in Kansas as a result of statistical sample inspections (SSI), OSM finds that Kansas is making a diligent effort to cite violations observed during inspections.

Out of the 65 SSIs conducted by OSM during the review period, 22 were conducted jointly with State inspectors. No TDNs were issued during joint inspections; the State issued 2 NOVs during the same inspections. No significant difference was noted in the issuance of enforcement actions by the State during joint or non-joint inspections.

The reduction in the total number of enforcement actions taken since the last review period (68 vs 28), along with a corresponding decrease in the TDNs issued by OSM (17 vs 11), and an increase in the rate at which Kansas cites violations indicates that the level of compliance by Kansas operators has increased. This is a reflection of the State's improved enforcement program.

Timeliness of issuing enforcement actions is reviewed by OSM to ensure prompt citation of violations. Of the 62 NOVs issued by Kansas in the 12 months following the 30 CFR 733 notification, OSM found that 50 NOVs were issued as the result of an on-site inspection. The other 12 NOVs were issued for the permittee's failure to submit required designs or water monitoring reports. No no-site inspection was required prior to issuance of these NOVs. A review of the 50 NOVs indicated that 92 percent, or 46 out of 50 were issued within two days and that the longest period of time taken for issuance of an NOV was seven days. Eight NOVs were issued on the same day that the violation was observed. The average NOV issuance period was 1.7 days. During the 1985 review period, OSM reviewed 28 State enforcement actions to determine the number of days required to issue a NOV or CO following an inspection. The State issued 71 percent of all enforcement actions on the same day as the inspection. The average enforcement issuance period is 0.8 days which is an improvement over the 1.7 days reported in the first annual review. OSM finds the timeliness of issuing NOVs is no longer a problem in Kansas.

4. *Ten-Day Notices:* a. *Timeliness of Response:* In its March 11, 1983 letter, OSM stated that while Kansas had responded promptly to five of seven ten-day notices (TDN) issued by OSM, the State generally did not respond appropriately to the specific problems and issues raised in the TDN. When the State failed to properly address OSM's concerns, OSM conducted follow-up inspections or requested additional information from the State to resolve the issues.

During the period April 1, 1983–March 31, 1984, OSM issued 17 TDNs to Kansas citing a total of 31 violations. Timely responses were received on 12 of 17 TDNs or 71 percent. Of the five TDN responses not received by OSM within the required 10 day period, the longest period before a response was received was 14 days. The average time for all TDN responses was 8 days. From April 1, 1984 through April 30, 1985, Kansas responded within the required period on 9 out of 11 TDNs, with an average response time of 9 days. OSM does not consider the timeliness of response to TDNs by Kansas to be a problem at this time.

b. *Appropriateness of Response:* In the 12 months following the 30 CFR 733 notification, Kansas responded appropriately to 52 percent or 16 out of 31 violations noted in OSM's 17 TDNs. The remaining 15 responses were judged to be inappropriate. OSM found that in all 15 of the inappropriate responses, Kansas failed to take an enforcement action.

During the period of April 1, 1984 to March 31, 1985, Kansas responded appropriately to 8 out of 11 TDNs issued by OSM. The three inappropriate responses concerned premature bond releases which occurred early in 1983 and do not reflect current MLCRB actions. No evidence of delayed inspection by Kansas was identified. OSM finds that Kansas is now more responsive in enforcing its approved program when compared to the period prior to April 1983. OSM will continue to monitor progress in this area through program oversight activities.

5. *Citizen Complaints:* Prior to the 30 CFR 733 action, OSM found that Kansas did not respond appropriately to citizen complaints. Specifically, OSM found that the State was not notifying the citizen of (1) its determination or action with respect to the citizen's allegation, or (2) the right to appeal its action or inaction. Additionally, OSM found that the State did not address in its report the specific allegations identified by the citizen.

From December 31, 1983 through March 31, 1984, Kansas received a total of five citizen complaints, four of which were in writing. OSM reviewed all five citizen complaints and found that Kansas initiated an investigation within two days of receipt of the complaints. The State found no violations upon investigation and, therefore, took no enforcement actions. OSM found that the State's documentation of its investigations was adequate to support its decision of all five cases. Kansas responded in writing to four of the five citizens within the approved time period, and the fifth response was only one day beyond the approved time period. OSM found that on four of the five complaints, citizens were not advised of the right to appeal the State's action, but when this was brought to the attention of the Executive Director, corrections in procedures were made immediately and resulted in the fifth complainant being properly advised. The State developed and submitted a copy to OSM of its citizen complaint tracking

log. OSM reviewed this system and concluded that it is adequate to identify, process and track citizen complaints. During the period April 1, 1984 through March 31, 1985, Kansas received 4 oral citizen complaints and 6 written citizen complaints. Three of the oral complaints were later received in writing. The State investigated and responded to all the citizen complaints it received.

OSM no longer considers citizen complaint procedures and investigations to be a problem in Kansas. The Director finds that Kansas has continued to use its system to properly track and respond to citizens' complaints. OSM will continue to monitor the State's effort through the annual oversight process.

Summary Inspection and Enforcement Findings

The Director finds that the Board has met the required frequency for complete and partial inspections and has demonstrated the ability and commitment to continue this practice.

The Director also finds that the number of enforcement actions taken by Kansas has risen compared to the 12-month period prior to the 30 CFR 733 notice and that the percentage of uncited violations observed by OSM has significantly decreased. Kansas' commitment to enforcing its approved regulatory program, hiring of additional staff, and improvement in its responses to OSM's ten-day notices, particularly since October 1983, indicate that Kansas' inspection and enforcement program is being implemented in a manner consistent with the provisions of the approved Kansas permanent regulatory program.

D. Civil Penalty Assessment

Prior to initiation of the 30 CFR 733 action, Kansas had not developed a civil penalty filing and tracking system and failed in virtually every aspect to implement its approved civil penalty assessment process. Kansas had not sent proposed assessments to operators within the required timeframe, had not documented reasons for specific point assignments, routinely and inappropriately waived the point system and issued assessments without using methods approved in its program. Kansas also conducted assessment conferences in a manner inconsistent with its established guidelines, and failed to afford an operator the opportunity to request an informal review.

1. *Review of Assessment:* Prior to initiation of the 30 CFR 733 action, OSM found that the MLCRB did not review each notice of violation in accordance with assessment procedures outlined in the approved regulatory program. Of the 29 violations cited, seven were not reviewed for penalty assessment.

OSM reviewed five penalty assessments and associated documents during September 1983. That review indicated that Kansas was not following its approved procedures for penalty assessments. At Kansas' request, OSM provided an assessment training course on October 12, 1983. OSM found during reviews conducted in February and April of 1984 that Kansas had improved its method for assessment of points through the proper utilization of the assessment criteria.

A total of 62 violations were cited by Kansas during the period April 1, 1983 through March 31, 1984. Two of the NOVs were later vacated, leaving 60 violations which required assessment. Kansas evaluated all of these violations for assessment and 44 (73%) were assessed a civil penalty. The remaining 16 violations were not assessed a civil penalty because they were assigned 30 points or less and a penalty was discretionary.

A total of 28 violations were cited by Kansas during the period April 1, 1984 through March 31, 1985. Four violations were vacated. Penalties were reviewed and proposed by the Board on 17 violations and the remaining seven were pending Board Review as of March 31, 1985. Of the 17 proposed penalties, 14 were for violations assessed 30 points or less and were waived under the Board's discretionary authority.

The review indicated that Kansas is following its approved procedures for penalty assessments and mandatory criteria are consistently considered. The Board is assessing all mandatory penalties.

2. *Penalty Tracking and Filing System:* Prior to initiation of the 30 CFR 733 action, OSM found that Kansas had no system for tracking civil penalties. The information available was inadequate to provide a record of the assessment actions or to allow the Board to track penalties from the initial assessment through the appeal process to collection. Kansas requested assistance from OSM in addressing this problem. OSM provided on October 12, 1983, assessment training and assisted the State in reorganizing its civil penalty records and filing system. During January 1984, OSM reviewed Kansas' assessment files developed after completion of the assessment training and found that the improvement made to the assessment filing system was sufficient to allow the assessment process to be tracked. The filing and tracking system maintained by Kansas is current and complete for tracking and recording assessment actions. A review of all 28 violations during the 1985 evaluation period indicated documentation of the calculations of penalty amounts and reasons for any adjustments or waiver of penalty assessments. Board assessment actions are documented and the operator is notified through the Board Orders.

Documentation of assessment actions was found to be adequate in the 1985 oversight report and Kansas continues using the prescribed system for record maintenance and documentation.

3. *Proposed Assessment Notifications:* Prior to issuance of the 30 CFR Part 733 notice, OSM found that the Board failed to send proposed assessments to operators within the required 30 days of issuance of an enforcement action. Only 6 out of 23 (23%) enforcement actions were assessed within the required 30 days. Additionally, OSM found that operators received no explanation of the penalty calculation, copy of the assessment worksheet, or notification of their right to appeal.

OSM conducted a review of the State's proposed assessment notification procedures and found that not all notices of proposed assessments, which are in the form of Board Orders, were sent within the required 30-day period. Two problems were identified which contributed to the delay:

1. Assessments are proposed by the Board, which meets on a bi-monthly schedule (60 days).

2. After the Board meeting, six to eight weeks were needed to develop and send Board Orders to the mine operators.

OSM has met with both the legal and administrative staffs of Kansas to resolve the timeliness issue. The Board is currently considering certain delegation, to expedite assessment issuance. Consideration is also being given to a program change as part of the pending regulatory reform process.

Improvement in the timeliness of assessment notification has been noted. Recent Board Orders were sent within two weeks of the Board taking action. OSM will continue to monitor the State's assessment notification process through the oversight process. OSM has found that Kansas now routinely provides operators with an explanation of the penalty calculation, a copy of the assessment worksheet, and notification of their right to appeal.

Additionally, the average proposed penalty assessment increased from $100 to over $2,300. In the 12 months following the 30 CFR 733 notification, Kansas collected five civil penalties for a total of $7,250. An additional 29 penalties were due for collection on two

abandoned mine sites. Two collection actions were filed by Kansas and are pending a decision in district court for collection of $104,200 in outstanding penalties.

4. *Assessment Conferences:* Prior to the 30 CFR 733 notice, OSM found that Kansas' assessment conferences were conducted in a manner inconsistent with its established guidelines. The conference officer did not serve the person assessed with a notice of his action, including a worksheet, when the penalty was raised or lowered. The reasons for the conference officers' decisions were not documented.

From April 1, 1983 to May 31, 1984, Kansas held no assessment conferences and none were requested. One conference has been held since May 31, 1984. The position of the Board was sustained with no changes in the penalty. A complete report was made including background findings and conclusions. The operator was notified of his right to appeal proposed assessments in accordance with the Kansas approved program. One assessment conference was held during the 1985 review period. It was scheduled and held within the 60 day time frame established in the Kansas program. OSM will continue to monitor the State's performance when assessment conferences are held.

Summary Civil Penalty Assessment Findings

The Director finds that the State has shown improvement in reviewing all violations for assessment, assessing penalties using the proper criteria and procedures, and collecting civil penalties. The Director finds that the timeliness of the entire assessment process will require constant effort to ensure that Kansas meets its required time constraints. Kansas has, however, demonstrated the intent and capability to carry out the civil penalty portion of its approved program by: (1) Attending assessment training, (2) instituting a tracking and filing system, (3) computing penalty points for each violation and order, (4) using a point formula in all proposed assessments, (5) verifying Board action in writing, (6) establishing conference procedures and (7) providing opportunity for administrative and judicial review.

III. Disposition of Comments

During the public hearing and public comment periods, the Director received comments from the public, coal operators and government agencies. In arriving at his decision, the Director considered the comments received in response to the public comment periods, provided at the public hearing and all of the testimony heard and documents received as a result of the public hearing or received during the public comment period.

One commenter stated that his agency was satisfied with the Kansas Board's enforcement of the reclamation regulations. The commenter also stated that landowners with lands being mined in Labette County were also satisfied with the way their lands were reclaimed (KS–265). The Director has found that the State has taken numerous steps to improve its program implementation as noted in the Findings section of this notice.

A mine operator stated that it was largely OSM's fault for the "economic instability" in the coal marketplace. The commenter stated that Kansas coal mine operators attempted to comply with reclamation standards required by the State program and SMCRA while adjacent States were allowed to operate under "delinquent" reclamation standards, thus distorting coal prices. The commenter also stated that reclamation standards could be better met if the State administers the program. The commenter requested that OSM recognize the improvements made by Kansas in its program and that it be allowed to continue administering the program (KS–263, KS–267). Review by OSM during the period covered by this notice found that initially permits did not comply with State regulations and that the State was failing to require permit deficiencies be corrected. The Director recognizes recent actions by Kansas to strengthen its program administration and correct permitting and inspection deficiencies. The Director believes that Kansas has taken action to address all identified program deficiencies.

A commenter, who is a landowner, stated that the MLCRB failed to obtain a bond for property he leased to an operator for use as a tipple. He asserted that failure to require the bond violated Kansas Statute (K.S.A. 49–406(a)) and resulted in his land being unreclaimed (KS–270). The Director agrees that the State acted improperly in failing to require bond on the tipple site. Kansas was operating under the interim program when the permit was issued. While Kansas' interim regulations required all land affected by mining operations be included in the permit and be bonded, the MLCRB improperly determined that bond was not required for the tipple. Kansas now requires that all tipples be permitted and bonded.

A commenter stated he and a number of other people were concerned about alleged water problems (flooding) resulting from State approved mining activities. The commenter was concerned about the capabilities of the MLCRB members and their conduct at Board meetings and recommended they be replaced. The commenter also alleged that blasting is not being controlled and that this results in homes being severely shaken. The commenter stated that the MLCRB has not and cannot enforce program requirements (KS–274). Kansas has revised and improved its permit review process to include an extensive review of the hydrologic consequences of mining in order to make the findings required under the Kansas' approved program. The MLCRB staff is qualified and has nearly doubled in size since the 30 CFR Part 733 action was initiated. A new MLCRB Chairman and staff Director have also been appointed. Blasting activities are being monitored by the MLCRB and Kansas regulations are being enforced. The Director believes that Kansas has taken action to address the implementation problem cited by the commenter.

One commenter cited some of the findings contained in OSM's 1983 annual evaluation report in pointing out the State's failure to meet its regulatory responsibilities. The commenter cited problems with the regulatory program permits, bonding, inspection frequency and practices, failure to issue violation notices and administrative functions. The commenter alleged that Kansas' failure to meet its regulatory responsibilities has resulted in water quality problems, inadequate reclamation, inadequate public participation and response to citizen complaints (KS–275). The Director agrees that prior to his March 11, 1983 letter, the MLCRB was not adequately enforcing the provisions of the approved Kansas program. The 1983 annual evaluation report prepared by OSM identified several major deficiencies in the Kansas regulatory program including those described by the commenter. The 1984 OSM evaluation report identified generally the same problems noted in the previous year's report but also recognized major accomplishments on the part of the State to increase its staff, improve administrative functions, meet inspection frequency requirements and strengthen its enforcement effort. The 1985 OSM evaluation report indicates that changes made by the MLCRB in the permitting program should improve the quality of permit applications and permit review. As detailed in the findings contained in Section II of this notice, the Director finds that Kansas

has implemented changes to address all known program deficiencies.

One commenter, while supporting Kansas primacy stated that a direct cause of the State's problem in administering its program lies in the MLCRB's failure to properly understand, accept and follow its statutes and regulations. The commenter also stated the MLCRB lacked the staff and expertise needed to proper administer the regulatory and Abandoned Mine Land (AML) program. The commenter pointed out potential conflicts of interest that exist in the present composition of the MLCRB and in the MLCRB being a part of the Kansas Corporation Commission, an agency which regulates the utilities that purchase coal from operators regulated by the Board. The commenter also indicated potential conflict in the use of a KCC employee as a hearing officer (KS–263, KS–281). The Director agrees with the commenter that at the time of the 30 CFR 733 letter the MLCRB was not adequately administering its program. As noted in the responses to previous comments, the Director believes that Kansas has initiated action to address all known program deficiencies.

Another commenter alleged a misguided attempt on the part of the OSM to over-regulate the coal industry in Kansas. The commenter stated that both OSM and the State need to "adopt a more common sense attitude in implementing more reasonable reclamation practices in Kansas" (KS–263).

The Director disagrees with the comment that OSM is overregulating the coal industry in Kansas. SMCRA includes provisions to protect society and the environment from the adverse effects of coal mining operations, and establishes minimum national standards for regulating the surface effects of coal mining. OSM has and will continue to ensure that States implement the provisions of the programs approved under SMCRA.

IV. Director's Decision

Having reviewed and considered all available information on the Board's implementation of the Kansas program, including the hearing record, OSM's oversight findings, public comments and all other contents of the administrative record in these proceedings, the Director has made the following determinations.

Kansas has corrected or initiated action to address problems identified by OSM in the State's implementation of its program. The Director has determined that the steps taken by Kansas to resolve the identified program deficiencies, including the addition of technical staff, the development of improved memorandums of understanding with supporting agencies, recent revisions of regulations, pending regulatory revisions, and operating procedures, as well as actions taken by the Kansas MLCRB to implement the approved program, demonstrate the State's intent and capability to administer its regulatory program as approved by the Secretary. For this reason, the Director is terminating the 30 CFR Part 733 action initiated on March 11, 1983.

To assure that the adverse effects of surface mining are controlled as required under SMCRA and the State program, OSM will continue its oversight of the Kansas regulatory program and provide assistance as necessary to the Kansas MLCRB.

Date: January 31, 1986.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 86–2735 Filed 2–6–86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies

AGENCY: Defense Department.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule concerning sale of government-furnished equipment or materiel and services to U.S. companies that appeared in the **Federal Register** on Thursday, January 23, 1986 (51 FR 3041). This action is necessary to include a new § 251.5(c)(5) and correct mistakes previously submitted.

PART 251—[AMENDED]

1. The authority citation for 32 CFR Part 251 is changed to read:

Authority: Sec. 305(2) Pub. L. 98–525, Pub. L. 97–392, 10 U.S.C. 2208(i), 22 U.S.C. 2770, and 96 Stat. 1962.

2. Page 3042, Column 1 subject heading "Appendix B–22 U.S.C. 2208(i)" is changed to read "Appendix B–10 U.S.C. 2208(i)".

§§ 251.3 and 251.4 [Amended]

3. Column 2 (§ 251.3, line 3), column 3 (paragraph (b), line 1) and § 251.4 (line 2) change "2751–2796c" to read "2770".

§ 251.4 [Amended]

4. Page 3043, Column 1 (paragraph (b), line 5) delete one of the section symbols and change "251.4(4)" to read "251.4(b)(4)".

§ 251.5 [Amended]

5. Section 251.5 (line 3) change "2751–2796c" to read "2770", and in Column 2 (line 6) change "paragraph (3)(ii)" to read "paragraph (e)(3)(ii)".

6. On page 3043, Column 2, paragraph (b)(3) (line 4) change "§ 251.5(3)(ii)" to read "§ 251.5(e)(3)(ii)".

7. Column 3, delete paragraph (5) in its entirety and replace with a new paragraph (5) to read: "(5) Accountability shall be in accordance with DoD 7290.3–M with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges, on items sold under 22 U.S.C. 2770 such as nonrecurring cost recoupment charge, asset use charge, and GMS administrative surcharge, shall be accountable as FMS surcharges under DoD 7290.3–M. Amounts collected for items sold under 10 U.S.C. 2208(i) shall be credited to accounts specified in paragraph 10402 of Foreign Military Sales Financial Management Manual, DoD 7290.3–M."

8. Page 3044, column 1 (paragraph (e), line 10) change "2751–2796c" to read "2770".

9. Column 2, (paragraph (e)(3)(i), line 2) change "251.3(1)"; to read "251.5(c)(2);"

§ 251.6 [Amended]

10. Column 3, section 251.6(a), line 4 and 251.6(b), line 3, change "GEM" to read "GFM".

11. Paragraph (d)(2), line 2 and (d)(3), line 3 change "2751–2796c" to read "2770".

§ 251.7 [Amended]

12. Section 251.7(a), line 2 change "251.4(3)" to read "251.6(d)(3)".

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 3, 1986.

[FR Doc. 86–2616 Filed 2–6–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 251

Indian Education Program—Formula Grants—Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations governing the Indian Education Programs—Formula Grants—Local Educational Agencies and Tribal Schools. These regulations implement changes made by Pub. L. 98–396 to the maintenance of effort requirement contained in the authorizing statute.

DATES: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ervin Keith, Chief, Support Services Branch, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2177, FOB–6), Washington, DC 20202. Telephone: (202) 732–1908.

SUPPLEMENTARY INFORMATION: These regulations amend the regulations in 34 CFR Part 251 which implement section 306(b)(2) of Part A of the Indian Education Act of 1972 (Title IV of Pub. L. 92–318, the Education Amendments of 1972, as amended). Section 306(b)(2) previously prohibited the payment of Part A formula grant funds to a local educational agency (LEA) unless the cognizant State educational agency (SEA) found that the applicant LEA maintained 100 percent of combined fiscal effort of the LEA and State, as determined in accordance with regulatory requirements. Pub. L. 98–396 amended section 306(b)(2) of the Act by: (1) Reducing from 100 percent to 90 percent the combined fiscal effort that must be maintained by the LEA; and (2) providing authority for the Secretary to waive that requirement for exceptional circumstances for one year only.

These regulations reflect the statutory reduction in the maintenance of effort requirement from 100 percent to 90 percent (§ 251.40(a)) and restate the Secretary's authority to waive the requirement under exceptional circumstances for one year only (§ 251.41(a)). In addition, these regulations: (1) Clarify how the level of maintenance of effort is to be determined (§ 251.40); (2) add the Secretary's criteria for consideration of a waiver of maintenance of effort (§ 251.41(c)); and (3) establish a maintenance of effort standard to be applied to LEAs in the funding year immediately following receipt of a waiver (§ 251.42). The Secretary considers those provisions of the regulations that are not specifically mandated by statute to be necessary for the efficient administration of the program and for equitable treatment of all LEAs that seek funding under this program.

These regulations include § 251.40 in its entirety to assist the reader.

The Secretary published a notice of proposed rulemaking (NPRM) on March 22, 1985 (50 FR 11513), and invited interested persons to submit comments. Comments were received from two commenters.

Under the maintenance of effort amendment to the Indian Education Act, an LEA may not receive a grant unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort for that purpose for the second preceding fiscal year.

The amendment also allows the Secretary to waive this provision for exceptional circumstances for one year only. The NPRM provided that, to meet the requirement the year after receiving a waiver, an LEA's fiscal effort in the preceding year would have to have been at least 81 percent of the third preceding year.

The two commenters expressed concern that the Department did not seem to be interpreting the new Indian Education maintenance of effort provision as the Congress had intended—that is, "in a manner similar to that found in Chapter 1 of the Education Consolidation and Improvement Act." They were concerned because the NPRM seemed to them to have "the questionable effect of allowing districts that decrease their per pupil expenditures continuously over a three-year period to continue to receive funds, despite the fact that the waiver is intended to allow for only a single year's decrease in local effort."

The commenters suggested that the Department use the Chapter 1 regulation as a guideline and include a provision "which would hold a school to no less than 90 percent of the per pupil expenditure in the year preceding the year for which the waiver was granted." Although the provision in the NPRM would have had the same effect as the Chapter 1 provision, the Department agrees that the language in the NPRM may have been confusing. However, in lieu of using the Chapter 1 regulatory language, the Secretary has chosen to adapt language from the regulations implementing the Carl. D. Perkins Vocational Education Act.

This new langauge is easier to understand and achieves the same result as the Chapter 1 provision favored by the commenters. Under the new provision: "No level of expenditures permitted under a waiver may be used as a basis for computing . . . fiscal effort . . . for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted."

The commenters also expressed concern that the proposed regulations would allow an LEA denied a waiver to reapply the following year and meet the fiscal effort requirement based on a lower level of expenditures that an LEA granted a waiver. The NPRM provided that, for the year after an LEA was denied a waiver, the LEA would be held to the statutory requirement (fiscal effort of the preceding year no less than 90 percent of the effort for the second preceding fiscal year).

All references to the effects of denials of waivers in subsequent years have been deleted from these final regulations as unnecessary. However, the Department believes it must treat LEAs that were not funded in the prior year as the Department treats all applicants for new grants. Under the Indian Education Act, an LEA that receives a waiver for one year also receives its grant that year. An LEA that is denied a waiver loses its *entire* allocation under the Indian Education Act for that year (unlike under Chapter 1 where an LEA denied a waiver receives a *reduced* allocation). The Department therefore believes an LEA denied a waiver should be treated as a new applicant in any subsequent year it reapplies for funds under the Indian Education Act.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovermental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is

to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 251

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.060, Indian Education—Formula Grants to Local Educational Agencies and Tribal Schools).

Dated: February 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 251 of Title 34 of the Code of Federal Regulations as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

1. The authority citation for Part 251 continues to read as follows:

Authority: Title IV, Part A, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241a-241ff), unless otherwise noted.

2. Section 251.40 of Subpart E is revised to read as follows:

§ 251.40 What is the maintenance of effort requirement?

(a) Subject to the granting of a waiver under § 251.41, the Secretary does not make payments to an LEA for any fiscal year unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort for that purpose for the second preceding fiscal year.

(b) For purposes of determining maintenance of effort, the "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are awarded.

Example: For funds awarded in fiscal year 1985 for expenditure by LEAs during the 1985–86 school year, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1984 (which began on October 1, 1983). The "second preceding fiscal year" is fiscal year 1983 (which began on October 1, 1982). If a State is using a fiscal year that begins on July 1, 1984, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1984. The "second preceding fiscal year" is the 12-month fiscal period ending on June 30, 1983.

(c)(1) For the purpose of making the finding described in paragraph (a) of this section, an SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2)(i) As used in this section, "aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA.

(ii) The term includes expenditures for administration, instruction, attendance, health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student activities.

(iii) The term does not include expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under Federal programs of assistance.

(3) As used in this section, "per pupil expenditures" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(20 U.S.C. 241ee(b)(2))

2. A new § 251.41 is added to Subpart E to read as follows:

§ 251.41 When may the Secretary grant a waiver of the maintenance of effort requirement?

(a) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 251.40, if the Secretary determines that the LEA's failure to meet that requirement is due exceptional circumstances.

(b) An LEA may ask the Secretary to grant a waiver of the maintenance of effort requirement by submitting a request for a waiver that includes a description of the circumstances that the LEA considers to be exceptional.

(c)(1) Exceptional circumstances include but are not limited to—

(i) A natural disaster; or

(ii) A precipitious and unforeseen decline in the financial resources of the LEA.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional circumstances.

(d) If the Secretary grants a waiver under paragraph (a) of this section, the affected LEA may receive its full allocation of formula grant funds.

(20 U.S.C. 241ee(b)(2))

4. A new § 251.42 is added to Subpart E to read as follows:

§ 251.42 What is the effect of a waiver on determination of an LEA's maintenance of effort in the following year?

No level of expenditures permitted under a waiver may be used as a basis for computing the fiscal effort required under § 251.40 for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted.

Example: An LEA was granted a waiver in fiscal year 1985 because its fiscal effort in the preceding fiscal year (1984) was less than 90 percent of its fiscal effort in the second preceding fiscal year (1983) due to exceptional circumstances. In determining maintenance of effort for the purpose of funding in fiscal year 1986, the LEA's combined fiscal effort for the preceding fiscal year (1985) must be at least 81 percent (90 percent of 90 percent) of its fiscal effort in the third preceding fiscal year (1983).

(20 U.S.C. 241ee(b)(2))

[FR Doc. 86-2669 Filed 2-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Oversize Vehicle Regulations; Zion National Park, UT

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking revises and deletes portions of an existing regulation that establishes road use and convoy requirements for large vehicles using the Zion-Mt. Carmel tunnel road in Zion National Park, Utah. This road receives substantial levels of use by buses and other large vehicles. There are two tunnels on this road that were constructed in the 1930's and that do not accommodate two lanes of traffic safely if large vehicles are involved; the road system itself is narrow with numerous tight curves; bridges carry a Federal Highway Administration rating that is marginal for larger trucks. In the interest of public safety, certain large vehicles

must be escorted by National Park Service (NPS) convoy. The existing convoy requirements and fees have not been changed since 1970 and therefore do not reflect current road and traffic conditions, changes that have occurred in large recreational vehicle specifications nor the increased cost to the NPS of providing convoy services. The NPS is deleting the portion of the existing regulation that contains size restrictions for vehicles traveling on the Zion-Mt. Carmel tunnel road so that the park superintendent may revise those requirements locally pursuant to authority provided to establish public use limits. This revision will allow a greater number of vehicles to proceed on this road without a convoy and provides the superintendent greater flexibility to revise vehicle size limits in the future. The fees charged for a convoy are being raised from $5 to $15 to recover the costs associated with providing the personnel and equipment necessary to provide this service which typically lasts approximately one hour.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Roger Rudolph, Chief Park Ranger, Zion National Park, Springdale, UT 84767, Telephone: 801–772–3256.

SUPPLEMENTARY INFORMATION: .

Background

The Zion-Mt. Carmel tunnel road was build by the Federal government in the late 1920's and early 1930's to provide a link through Zion National Park between two sections of Utah State Route 9 built on either side. Very few roads existed in that area then, or do now, and the road provides a convenient access between the small communities of Springdale and Mt. Carmel as well vehicle access for park visitors. In 1959 the National Park Service (NPS) developed a special regulation to control large truck traffic on the tunnel road; the regulation was amended in 1970. Use of the tunnel road by large vehicles such as motorhomes, buses, travel trailers and a few trucks has increased significantly over the years, with vehicles becoming larger as well. The tunnel road severely restricts the size of vehicles that can be negotiated over it safely because of its lane widths in the tunnels (10'), low clearance in the tunnels (11'6"), low bridge weight limits and severe curves. Total visitation to the park has increased over 50% since 1970. On a typical summer day, numerous buses and motor homes exceeding the current height limitations travel the tunnel road. The present regulation restricts truck use so that it remains low and consists mainly of vehicles associated with local businesses; alternate routes around the park are available for vehicle operators who do not wish to be escorted and pay the fee or whose vehicles exceed the physical limitations of the roadway.

This revision deletes all specific vehicle size limitations from 36 CFR 7.10 in favor of the park superintendent's using the authority in 36 CFR 1.5 to establish public use limits without a formal rulemaking. By using this authority, the superintendent can have greater flexibility to establish and then change, in the interest of public safety, vehicle size and weight restrictions that accurately reflect and respond to local requirements and road conditions as well as changing patterns of public use, visitation and local transportation. However, except in emergency situations, the superintendent is required to prepare a written determination justifying the action, prior to implementing or terminating a restriction imposed pursuant to this authority. The public is assured of being notified of the establishment of new restrictions or of changes made to existing restrictions through the public notice requirements of 36 CFR 1.7. The net result of this revision is to allow a greater number of large vehicles to negotiate the tunnel road without a convoy by relaxing existing vehicle size restrictions which are outdated. A permit and payment of convoy fees are required only of operators of large vehicles that exceed the new size restrictions and who wish to travel through the park nevertheless. Such vehicles would typically be semi-tractor trailers or vehicles towing excessively long recreational trailers.

The NPS is also increasing the fees charged for a required vehicle convoy from $5 to $15. A typical convoy involves one park ranger in a marked patrol vehicle escorting the oversized vehicle for a distance of 16 miles, a procedure that usually lasts one hour. This increase is necessary for the NPS to recover the costs of providing the service. Federal, State and local government vehicles are still subject to permit and convoy requirements, but are not required to pay convoy fees.

The NPS published a proposed rule and requested public comments on this rulemaking on May 14, 1985 (50 FR 20111). No public comments were received in response. The final rule is therefore published unchanged.

Drafting Information

The following National Park Service employees participated in the writing of this regulation: Larry E. Florea, formerly of Zion National Park; Roger Rudolph of Zion National Park; and Andy Ringgold of the Branch of Ranger Activities, Washington, DC.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking, when compared to the effects of the existing regulation, are beneficial to the owners of affected oversized vehicles. These savings result from the fact that a large percentage of the vehicles subject to load, size, and convoy restrictions under the existing regulation will no longer be subject to that requirement after this rulemaking goes into effect.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR Chapter I is amended to read as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.10(a) is revised to read as follows:

§ 7.10 Zion National Park.

(a) *Vehicle convoy requirements.* (1) An operator of a vehicle that exceeds load or size limitations established by the superintendent for the use of park roads may not operate such vehicle on a park road without a convoy service provided at the direction of the superintendent.

(2) A single trip convoy fee of $15 is charged by the superintendent for each vehicle or combination of vehicles convoyed over a park road. Payment of a convoy fee by an operator of a vehicle owned by the Federal, State or county government and used on official business is not required. Failure to pay a required convoy fee is prohibited.

3. Paragraphs (b), (c), and (d) are removed.

4. Paragraph (e) is redesignated as (b).

Dated: January 3, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-2760 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42012B; TSH-FRL 2815-5b]

Identification of Specific Chemical Substance and Mixture Testing Requirements; Diethylenetriamine

Correction

In FR Doc. 85-12422 beginning on page 21398 in the issue of Thursday, May 23, 1985, make the following correction: On page 21412, in the second column, in § 799.1575(c)(2)(i)(D), in the fifth through seventh lines, remove "or the * * * of this section".

BILLING CODE 1505-1-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 85-204; RM-4796; FCC 86-30]

Common Carrier Services; Implementation and Scope of the Uniform Settlements Policy

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action clarifies the scope of application of the Commission's uniform settlements policy for parallel international telecommunications routes. It also establishes a new, streamlined procedure for dealing with requests for waiver of the policy. This order terminates the rulemaking procedure.

EFFECTIVE DATE: March 10, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Room 534, FCC, Washington, DC 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects 47 CFR Part 43

Communications Common Carrier, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Report and Order

In the Matter of Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes; CC Docket No. 85-204 Rm-4796; FCC 86-30.

Adopted: January 14, 1986.
Released: January 30, 1986.

By the Commission.

Table of Contents

I. Introduction

1. We adopt today a Report and Order modifying and clarifying the implementation and scope of our uniform settlement policy. This Order is based on our recent Notice of Proposed Rulemaking in this matter,[1] and on comments[2] and replies[3] received in response thereto.

A. Summary of Notice of Proposed Rulemaking

2. In April 1984, RCA Global Communications, Inc. (RCAGC) and Western Union International, Inc. (WUI) filed a joint Petition for routes.[4] In our

[1] Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes, Notice of Proposed Rulemaking, CC Docket 85-204, FCC 85-332, released July 3, 1985 [hereinafter "NPRM"].

[2] Comments were received from the Association of Data Processing Service Organizations, Inc. (ADAPSO), American Telephone and Telegraph Company (AT&T), FTCC McDonnell Douglas International Telecommunications Company (FTCC), Graphnet, Inc. (Graphnet), GTE Sprint Communications Corp. and GTE Telenet Communications Corp. (together GTE), Hawaiian Telephone Company (HTC), the International Communications Association (ICA), ITT World Communications Inc. (ITTWC), MCI International, Inc. (MCII), the National Telecommunications and Information Administration (NTIA), RCA Global Communications, Inc. (RCAGC), T.C.P., TRT Telecommunications Corporation (TRT), U.S. Telecom, Inc. (Telecom), and The Western Union Telegraph Company (Western Union).

[3] Replies were received from ADAPSO, AT&T, FTCC, Graphnet, GTE (Sprint and Telenet, jointly), HTC, ICA, ITTWC, MCII, NTIA, RCAGC, TCP, TRT, and Western Union.

[4] This policy, which developed in the 1930's and has its roots in antitrust law, has evolved through case law and Commission policy statements. *See, e.g.*, Mackay Radio and Telegraph Co., 2 FCC 592 (Telegraph Committee 1936), *aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom.* Mackay v. FCC, 97 F. 2d 641 (D.C. Cir. 1938) *(Mackay I)*; Mackay Radio and Telegraph Co., 25 FCC 690 (1951), *rev'd on other grounds sub nom.* RCA Communications, Inc. v. FCC, 201 F. 2d 694 (D.C. Cir. 1950), *vacated and remanded*, 346 U.S. 86 (1953) *(Mackay II)*; Uniform Settlement Rates, 84

Continued

Notice of Proposed Rulemaking of July 1985, we determined that a thorough analysis, with possible modifications to follow of the uniform settlements policy (USP) is in the public interest. The NPRM examined the issues raised by the petition itself, by then-pending or recently-resolved cases, and by pleadings submitted in response to the petition.[5] The Notice identified issues and drew tentative conclusions as follows:

(a) *Application of the USP to transit-routed communications:* The USP has previously been held applicable to transit telex traffic when the transit arrangement is demonstrably designed to circumvent the requirements of the USP.[6] The NPRM affirmed this application of the policy, and solicited comments regarding definitions or guidelines for the policy's application in ambiguous cases (where the "parallelness" of transit and direct routes is not clear).

(b) *Application of the USP to services not previously so regulated:* Recent cases have raised the question whether the USP applies to services to which it has not been expressly extended, such as voice services [7] and enhanced services.[8] The NPRM tentatively concludes that the USP applies to any service, regardless of technology or form, where conditions exist which are conducive to whipsawing by foreign communications entities. The NPRM suggested, however, that such regulation can be deferred with regard to enhanced services, at least until actual abuses are evidenced.

(c) *Application of the USP to modifications of operating agreements' terms of currency use and conversions:* The question of currency conversion (specifically, conversion from national currencies or the gold franc to the Special Drawing Right (SDR), the monetary unit adopted by the International Monetary Fund (IMF) and the International Telecommunications Union (ITU) Plenipotentiary Conference) arises through a history of discussion (still ongoing) at the IRC/FCC meetings,[9] an informal agreement reached in the Hague in 1980,[10] and a complaint presently pending before the Commission.[11] The bifurcated issue discussed in the NPRM is: (a) Does such conversion fall within the ambit of the USP, and therefore call forth the USP's requirements of uniformity? and (b) assuming the desirability of the universal use of SDR's, how can such conversion be most smoothly and efficiently effected? The NPRM confirmed that the USP does apply to currency conversion in that it requires uniform settlement rates. Further, the NPRM tentatively concluded that such conversion can best be accomplished either through simultaneous conversion by all carriers, or through individual carriers' negotiations with their foreign correspondents, and the use of waiver requests before this Commission.

(d) *Modification of the procedures relating to USP implementation:* We tentatively concluded in the NPRM that, because whipsawing typically occurs, if it occurs at all, at stages of negotiation prior to the Commission's oversight or regulation, the present procedures used to implement the USP are less effective than is desirable. The NPRM suggested a new streamlined procedure which would result in earlier and more thorough Commission oversight and awareness of negotiations (and of the possibility of whipsawing), while resulting in no significant additional time expenditure. This procedure would include Commission review of every operating agreement modification, even those agreed to by all relevant carriers, and would incorporate use of a sixty-day semi-automatic grant.

FCC 2d (1980). This policy requires that all U.S. international record carriers (IRCs) offering similar service to the same point must do so under identical accounting rates, settlement rates, and divisions of tolls.

[5] Comments on the petition were filed by the Western Union Telegraph Company, the American Telephone and Telegraph Company, and ITT World Communications. Reply comments were filed by RCA Global Communications.

[6] *RCA Global Communications* v. *The Western Union Telegraph Company*, File No. E-83-24, FCC 85-286, released June 28, 1985.

[7] *See* MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 16, 1985.

[8] Second Computer Inquiry, 77 FCC 2d 384 (1979) (Final Decision), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. den. sub nom.* Louisiana v. United States, 103 S. Ct. 2109 (1983) [hereinafter "*Computer II*"].

[9] Regular FCC–Industry meetings were initiated in 1981 as a means of allowing Commission staff and carrier representatives to meet periodically to consider accounting and settlement rate modification requests. This was intended to be a way for U.S. carriers to present a "united front" to respond to the PTT's monopoly status in their negotiations with competitive U.S. carriers, and was seen as a reasonable response to the unique realities of the international marketplace.

[10] A meeting in 1980 of several CEPT and other PTT representatives with U.S. carrier representatives produced no binding document or agreement, but a series of correspondence evidencing a general willingness and desire to proceed with conversion to SDR's.

[11] RCA Global Communications v. TRT Telecommunications Corporation and FTC Communication, Inc., File Nos. E-85-49 and E-85-50. The complaint was filed in September 1985; answers were filed by both defendants; RCA Global Communications also filed a reply. TRT Telecommunications Corp. filed, in October, a Request for Waiver of Policy Regarding Uniform Accounting/Settlement Rates on Parallel International Routes.

B. Background

3. The policy of uniform settlement rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct negotiation with multiple private U.S. entities for the formation of operating agreements to arrange international services.[12] As noted above, the uniform settlements policy requires that all carriers providing the same service to the same foreign point have the same accounting, settlement and division of tolls arrangements with the foreign administration. Specifically, the operating agreements must stipulate: (a) Uniform accounting rates (a negotiated rate of reimbursement for service, which is then shared by the initiating and terminating entities); (b) uniform terms for the sharing of tolls (the percentage of the accounting rate to be allowed each entity, generally 50–50); and (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually Gold Francs (GF), U.S. dollars, or special drawing rights (SDR's)).[13]

4. These requirements of uniformity are meant to assure that the operating agreements achieve their purpose of allowing both service providers fair compensation for the costs of service. Because the U.S. carriers are private and competitive, the foreign telecommunications entities (hereinafter PTTs, for postal, telegraph and telephone administrations), which are monopolistic, enjoy an advantageous bargaining position. The result of this situation is that the monopolist PTT has the ability, as well as the incentive, to manipulate the multiple U.S. entities by playing them against one another in order to gain unfairly favorable terms and conditions. This manipulation is referred to as "whipsawing." The most frequent concession sought is a modification of the accounting rate in such a manner as to decrease the revenues paid by the PTT to the U.S.

[12] The operating agreement provides the technical details of interconnection as well as the terms for the settlement of accounts between the U.S. carrier and the foreign administration. All U.S. carriers use the same generic settlement procedure for switched services. When a U.S. carrier transmits a message to a foreign country, the U.S. carrier pays the foreign correspondent for terminating/delivering the message. Similarly, if a foreign correspondent transmits a message to the U.S., the U.S. carrier will receive payment to compensate it for effectuating delivery.

[13] We emphasize that the policy does not require or encourage uniform collection (tariff) rates for international services.

carrier for effectuating delivery in the United States or to increase the revenues paid by U.S. carriers to the PTT to effectuate delivery in the foreign country. While historically tied to costs, accounting rates have gradually come to reflect the relative negotiating positions of the carriers and foreign administrations.

5. We have previously found that whipsawing is harmful to the U.S. public interest because, in allowing the PTTs to dictate the terms under which international services are offered, whipsawing reduces the total revenues of U.S. carriers, and, most importantly, decreases the ability of U.S. carriers to lower the collection rates they charge their customers. The seriousness of the problem is compounded by the fact that one U.S. carrier's acceptance of terms unfairly favorable to the PTT, insofar as these terms differ from those in effect for other carriers, creates substantial pressure on the other U.S. carriers to make identical concessions in order to retain or expand their business. Thus, the foreign PTT, through negotiation with a single U.S. entity and control over the routing of return traffic, may succeed in dictating terms to all U.S. carriers. This situation is exacerbated, as we have remarked before, by the formation of consortia of PTTs and by the position of many PTTs, for some services, as debtors able to decrease rates by the simple expedient of paying only what they want.[14] In order to enable the U.S. carriers to create a unified bargaining position by which they can approach parity with the monopolistic PTTs, and thus to prevent whipsawing, the Commission has developed requirements of uniform terms and conditions in international operating agreements.

6. Our focus to date has been on facilitating the development of a competitive marketplace characterized by lower rates and greater service/carrier options for users. This continues to be our goal; our policy specifically recognizes the potential value of occasional nonuniformity, which may increase competition and produce lower rates and/or improved services. Nonetheless, the unique characteristics of the international marketplace mean that regulation in the form of the application of our uniformity requirements serves to help U.S. competitive entities present a united front in negotiation with foreign monopoly administrations, and is necessary in service of the public interest. Such regulation is ineffectual if undertaken in such a way as to allow "windows" for whipsawing before, or in spite of, this Commission's awareness of, participation in, and oversight of the bargaining process. It is this set of circumstances which has engendered the rulemaking proceeding here concluded, and which has militated for the new procedural approach herein set forth. With the adoption of this Report and Order we affirm our above-stated tentative conclusions, and set forth guidelines and definitions for their clarification and implementation.

C. History

7. One of the first decisions taken by this Commission involved the uniform settlements policy.[15] In a 1936 decision we denied the Mackay Radio and Telegraph Company authorization under Section 214 of the Communications Act for a radio circuit to Oslo, Norway because we objected to the settlement terms in Mackay's proposed operating agreement with the Norwegian PTT. We found the agreement objectionable because it would have permitted the Norwegian PTT to play two U.S. entities against each other, to manipulate traffic flows, and to retain a greater percentage of the accounting rate at the expense of a U.S. carrier. We stated that this attempt by the PTT to maximize its revenues by whipsawing the U.S. companies was the normal consequence of the international market situation,[16] and that the protection of U.S. non-monopolist entities therefore rests with the Commission, falling within its general powers mandate to protect the public interest, convenience and necessity.

8. Further development and application of the uniform settlements policy again involved the Mackay Radio and Telegraph Company.[17] In this 1951 decision we expressed concern about the whipsawing of U.S. carriers by foreign PTTs (the application was to add a fifth carrier providing service to Portugal and the Netherlands). Because the terms of the proposed operating agreement were identical to the terms of the agreements already in effect, however, our concern was assuaged, and we granted the application to place another competitor into the market. The policy was applied again in *TRT Telecommunications Corporation*, 46 FCC 2d 1042 (1974), when TRT applied to provide service to the U.K. upon terms more favorable to the British entity than the terms then in effect between the U.K. and other U.S. carriers. The Commission granted TRT's application contingent upon the operating agreements being brought into conformity with existing agreements.

9. We considered the uniform settlements policy again in a 1980 policy statement which resulted from a request by TRT to decrease its U.S.–U.K. telex accounting rate.[18] In that statement we reaffirmed the need for and viability of the uniformity policy, but announced also that we would entertain requests for waivers of the policy in appropriate cases.

We found that the public interest requires a uniform settlements policy, and we stated:

> Absent our policy of uniformity it would be less difficult for a foreign correspondent to negotiate a more advantageous settlement. . . . In such instances more money would flow to the foreign correspondent. In some cases this could lead U.S. carriers to raise the collection rate at the expense of the U.S. ratepayers.

84 FCC 2d at 123. We also noted, however, that situations might occasionally arise in which "public interest benefits would warrant grant of a waiver of the policy. . . ." *Id.*

10. At that time we discussed factors we would consider in the analysis of waiver requests—among them lower collection rates, improved services and increased competition. Recognizing the value of flexibility and the potential benefits of non-uniformity, as well as the improbability of "typical" situations in the international telecommunications marketplace, we declined to specify rigid rules or a *prima facie* test to govern the grant of waivers. We also declined to establish a particular procedure or timetable for action on waiver applications. The possibility of whipsawing, with the consequent potential for diversion of substantial revenues from U.S. carriers, prompted us to initiate, in early 1981, a series of periodic industry meetings involving U.S. carrier representatives and Commission staff.[19] These meetings

[14] *See* NPRM para. 4 and note 6.

[15] *Mackay I, supra.*

[16] We said in that Order:

> To expect the telegraph administration to play the competing companies against each other is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest. 2 FCC at 599.

[17] *Mackay II, supra.*

[18] Uniform Settlement Rates, *supra* note 4.

[19] *See* note 9, *supra*. The petition in this proceeding included questions of procedure, scope and confidentiality with regard to these meetings. These issues are discussed at part II.E., *infra*.

continue, but their efficacy in combating whipsawing has been called into question, and is one major issue of this proceeding.[20]

D. Summary of Comments

11. The pleadings received in response to the NPRM (*see* notes 2 and 3, *supra*) generally support the NPRM's tentative conclusion finding a continuing need for and justification of the USP. MCII, for example, stated that the dangers of whipsawing, and the resulting need for a strong and consistent policy of uniformity, are increasing as a result of the Commission's open entry policy for international telecommunications. Further, MCII pointed out, foreign administrations are taking commercial advantage of U.S. policies of open entry and streamlined regulation by establishing affiliates to compete with U.S. carriers within the United States, for both domestic and international traffic. NTIA stated that instances of whipsawing are increasing, and that foreign administrations are becoming more sophisticated in their techniques. FTCC also warned of "fierce competition from abroad," and provided statistics regarding the inroads on American industry revenues made by foreign refiling and resale initiatives. On the other hand, the commenters' support of our procedural proposals, while strong, is not unquestioning. FTCC stated that, although it sees a continuing need for the USP, our focus in applying the policy has been misplaced. FTCC found that the competition between the U.S. industry and that of certain foreign administrations has caused far greater harm to the U.S. public interest than does inter-carrier competition with its inherent dangers of whipsawing. FTCC argued that the Commission's application of the USP has hindered rather than helped the IRCs in combating the drain of traffic, and that future deliberations regarding the policy's use should consider not only an action's immediate impact upon the IRCs, but also its effect on the competitive standing of the U.S. industry vis-a-vis its foreign competitors. The commenters discussed the major issues broached by the NPRM as follows:

12. *Application of the USP to transit-routed communications:* The applicability of the USP to transit traffic was dealt with in a recent order, following a complaint by RCAGC that Western Union was abusing this Commission's traditional flexibility regarding the USP and transit traffic, in order to circumvent the requirements of uniformity.[21] As noted above, the NPRM relied on that case to conclude that "where a transiting arrangement has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and U.S. ratepayers, we shall strike down that arrangement as contrary to our uniformity policy."[22]

13. The commenters were virtually unanimous in stating that the Commission's proposed approach—monitoring transit traffic, but forebearing from active regulation except where abuses are demonstrated [23]—is the correct one.[24] Both MCII and FTCC acccepted the NPRM's invitation to propose definitions of "transit" and "direct" traffic.[25] Western Union noted that the Commission has yet to establish clear and unambiguous guidelines in its regulation of transit traffic, pointing to the absence of definition of demonstrable abuses, and to the phrase "consistent with similar arrangements" in the Commission's June 28, 1985 order responding to RCAGC's complaint.[26] Western Union suggested that we adopt the standard mentioned in that order, and in a Common Carrier Bureau order of September 17, 1985 in the same matter, *i.e.*, a simple requirement that no terminal entity receive or retain more than half of the established accounting rate.

14. *Application of the USP to services not previously subject:* (a) *Voice services:* The NPRM tentatively concluded that the USP should apply to voice services because "as competition develops in the provisions of voice services the potential for whipsawing will increase." While all the commenters who dealt with this issue, with the single exception of AT&T, agreed that whipsawing could be a problem and that the USP should therefore apply to voice, several are of the opinion that until whipsawing is actually evidenced, the requirements of the USP should be deferred.[27] AT&T suggested periodic, full filings by carriers, and careful Commission monitoring (but no active regulation, nor actual application of the USP), until such time as actual abuses could be demonstrated—an occurrence AT&T believes unlikely.[28] RCAGC cite examples of voice service whipsawing; NTIA in its reply drew on the comments of several of the United States International Service Carriers (USISCs) to propose a monitoring and filing procedure which would make inplementation of the policy simple and immediate in case of abuses, while

[20] Because a PTT will typically discuss proposed accounting rate and return flow modifications with the affected carriers, any whipsawing involved tends to take place prior to (or sometimes shortly after) the submission of waiver requests, and is therefore never fully addressed by the Commission. This approach to waiver requests has also resulted in a lack of clar.ty regarding certain other issues which arise, such as the definition of parallel routes (to which the policy applies), and the determination of which services are, and which are not, covered by this policy. It is this situation which has given rise to not only a number of waiver applications, but also the present petition for rulemaking and comments.

[21] RCA Global Communications v. The Western Union Telegraph Company, *supra* note 6.

[22] *Id.* at para. 5.

[23] Several commenters suggested full reliance on the submission of complaints, without any other *sua sponte* review of regulation by the Commission.

[24] RCAGC was the single exception. RCAGC feels that transit traffic should be fully regulated in any instance where the point served by transit traffic is also served by any U.S. carrier directly. In its reply comments, RCAGC enlarged upon this thesis to recommend that regulation is appropriate where the elective use of transit over direct routes diminishes the United States' share of revenues. Further, RCAGC stated, the reliance on complaints rather than active regulation is an unsatisfactory and inefficient way to proceed, especially where a consortium of foreign administrations is involved.

[25] MCII proposed this definition: *direct* routes carry traffic over direct, point-to-point circuits with no intermediate switching. (Through-patched end-to-end circuits traversing one or more overseas countries, so long as they include no intermediate switching, are also direct). *Transit* routes are those which do incorporate switching in one or more intermediate international exchanges.

FTCC stated that *transit* traffic is categorizable to four types —(1) U.S.-middleman transit where the United States carrier is the transiting point for traffic flowing between two foreign countries which do not have direct relationships; (2) overflow transit, which is traffic flowing between a United States IRC and a PTT with which it has direct relations, which is transited through a third country because the direct circuits are congested; (3) standard transit, which is traffic between a U.S. IRC and a PTT with which it does not have direct relations, which flows via a foreign point (with which the IRC does have direct relations), and (4) domestic transit, where traffic from a PTT to an IRC with which it does not have direct relations is transited through a second U.S. IRC. According to FTCC, the first two types of transit require no regulation by this Commission. The third type should be free of restrictions, according to FTCC, so long as the total accounting rate is the same as for direct traffic. The fourth type especially when the domestic transiting is effected without the concurrence of the terminating carrier, inflicts significant economic harm on that carrier and could therefore appear a worthy subject of regulation, in FTCC's view.

[26] *See* note 6, *supra*, and part II. A., *infra*.

[27] HTC suggests deferral of regulation until abuses are shown. Other commenters, including GTE, ICA, ITTWC, MCII, NTIA, RCAGC and TRT, agree with our tentative conclusion that the USP applies to voice services.

[28] AT&T's suggested filings would include: (a) A description of the existing and the new arrangement for any proposed modification, and a projection of the revenue effect on the proponent carrier; (b) whether changes in the methods of allocating return traffic among U.S. carriers were included in the negotiations leading to the charge, and if so, to what effect; (c) Whether there had been any attempt by the PTT(s) involved to secure concessions in the accounting rate through any measures (such as reallocations of return traffic) which would indicate whipsawing.

avoiding delay and administrative burden in the meantime.[29]

(b) *Enhanced services:* The NPRM tentatively concluded that while the Commission has the authority to apply its policies to enhanced services, we should not do so internationally. This tentative conclusion engendered a two-part response from commenters: first, whether the Commission *could* apply the policy to international enhanced services, and second, whether we should do so. The commenters who deal with the question of our authority to include enhanced services were split on the question of whether the Commission's mandate extends this far.[30] Our *Computer II* decisions [31] indicate that authority for such regulation extends to common carrier services only. Several commenters suggested, however, that any service provider whose correspondent is a PTT or other foreign monopolist should be subject to the policy: the PTTs do not distinguish between USISCs, recognized private operating authorities (RPOAs), or other (officially unrecognized) entities.[32] The Commission noted in the NPRM that the USP would (and could) apply only in those situations in which an operating agreement (establishing accounting rates and divisions of tolls) has been negotiated between the service provider and the PTT; the commenters agreed with this evaluation.

15. On the question of whether the Commission ought to apply the USP to enhanced services, the commenters were also roughly split. Several suggested that we affirm the validity of the USP in this context, but that until whipsawing or other abuses are shown, we should simply observe or monitor.[33] Other commenters cited recent cases of abuse in support of their contention that application of the USP is necessary and justified now.[34]

16. *Application of the USP to modifications of operating agreements' terms of currency use and conversion:* The NPRM discussed the desirability of converting the financial terms of all operating agreements to SDRs (Special Drawing Rights, the "universal currency" created and employed by the International Monetary Fund), and raised two questions to which the commenters respond.[35] First, does a modification or conversion of currencies in an operating agreement constitute a change in terms or rates such as the USP prohibits, absent waiver? Second, if universal use of the SDR is desirable,[36] how can this conversion best be accomplished?

17. The NPRM states:

> Because the uniform settlements policy requires uniformity of terms, rates and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits . . . . Any carrier desiring to change [currencies or rates] . . . would be required to file a waiver petition.

NPRM, para. 38. Of the several commenters who discussed the question whether SDR conversion falls within the ambit of the USP, only FTCC took issue with our conclusion that it does.[37] TRT stated that currency conversion does fall under the USP, but that violation of the USP should be seen not in every conversion, but only in the case of a demonstrable net financial impact which is inimical to U.S. interests.[38]

18. In the NPRM, we briefly discussed various methods of conversion, but then tentatively concluded that the methodology of conversion should be left to the carriers. The commenters responded variously: RCAGC made suggestions regarding the use of a floating coefficient (tied to currency exchange rates) rather than the stationary coefficient of the ITU recommendation. ITT noted that the timing of settlement payments may be even more important than the currency employed, or the method of conversion used, and suggested the formation of strict payment timetable guidelines and the establishing of a settlements clearinghouse. ITTWC and MCII commented that the waiver procedure presently in place is the best means by which currency conversion can be accomplished, but Western Union warned that if this procedure is retained, universal conversion to SDRs by 1988 will be impossible.

19. *Modification of procedures relating to USP implementation:* The NPRM suggested a new, streamlined procedural approach to USP matters which would serve more effectively to combat whipsawing by subjecting to Commisson scrutiny *all* relevant modifications of operating agreements, even those upon which the IRCs have reached unanimous agreement.[39] By incorporating a 60-day quasi-automatic grant mechanism, we hope to ensure that the increased thoroughness of review will not cause increased delay—and that, in fact, consideration of USP matters will proceed more expeditiously than under the present system.[40] The

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[29] NTIA's approach is as follows: (a) the Commission makes clear that the USP applies to voice, and that attempts at whipsawing will not be tolerated; (b) the UPS will be in effect as new carriers initiate services to create competitive markets. New entrants thus will enter the market at a presumably fair rate; (c) all accounting rate and other USP-related changes will be filed with the Commission. These filings, as suggested in AT&T's comments, would be complete enough to apprise the Commission of any competitive abuses.

[30] ADAPSO, FTCC, Graphnet, MCII, TCP and Western Union stated that the USP does not apply to enhanced services (although FTCC said that if the policy were held to apply to enhanced services at all, it should apply across the board, without the common carrier restriction). GTE, ICA, ITTWC, NTIA, RCAGC and TRT said the USP does apply to enhanced services.

[31] Note 8, *supra See also* GTE-Telenet Communications Corp., 91 FCC 2d 232 (1982), *reconsideration*, FCC 85-29, released February 22, 1985, which confirmed the applicability of the *Computer II* decisions to international services and facilities.

[32] This view was voiced, for example, by FTCC, GTE, ICA, ITT and TRT.

[33] The proposal that the Commission monitor but not affirmatively impose the USP, absent demonstrated abuses, is propounded by, among others, MCII NTIA and FTCC. (FTCC preferred no application of the USP to enhanced services, but argued that if enhanced services are to be covered, they should be covered across the board—*see* note 30, *supra*).

[34] ICA argued, for example, that many overseas markets have in place only one to two enhanced service providers, and will resist authorization of additional service providers because of the increased costs incurred in such accommodation. Further, according to ICA, PTTs are unlikely to respect our domestic distinctions regarding basic and enhanced services, especially as common basic services tend increasingly to become "enhanced" simply through protocol changes used to gain access via switched services rather than tie-lines. Finally, ICA argued that the view (expressed, for example, by Graphnet in its comments) that enhanced services differ enough from one another so that a foreign administration could never successfully play off one provider against another for the same service, is belied by substantial evidence of strong similarities among certain enhanced services provided by international carriers. All these factors taken together, stated ICA, create exactly the scenario the Commission foresaw but dismissed as unlikely in our NPRM: that a decision not to include enhanced services could produce significant whipsawing as a result of the reclassification of many basic services, at the urging of a PTT into enhanced services.

[35] We note that shortly after release of the NPRM, RCAGC filed a complaint dealing with the issue of SDR conversion. RCA Global Communications, Inc. v. TRT Telecommunications Corporation and FTC Communications, Inc., File Nos. E-85-49 and E-85-50, filed September 30, 1985. This complaint will be discussed and resolved within the present proceeding; *see* Section II. C., *infra*.

[36] The NPRM noted a 1980 informal agreement regarding universal conversion to SDRs by 1988. This goal is discussed further, *infra*.

[37] FTCC stated that the Commission's inclusion of currency conversion within the ambit of the USP constitutes an "extension" of that policy into "a new field." ITTWC, MCII, RCAGC, TRT and Western Union stated that currency conversions are modifications such as are regulated by the USP.

[38] This approach faced strong resistance in the reply comments of RCAGC.

[39] *See* NPRM para. 40.

[40] The present system, described at paras. 4-5, 13 and 39 of the NPRM, is inadequate because it comes into effect only upon the filing of a non-unanimous waiver request, thereby allowing significant opportunity for whipsawing.

response of the commenters was generally positive; all agreed that delay has been a major, troubling factor in USP matters to date, and is to be avoided or lessened to the greatest extent possible. Several also confirmed the Commission's holding that more universal and thorough review is needed; only FTCC (in its reply comments) opposed this suggestion, on the grounds that added review would necessarily create additional delay, which is to be avoided at virtually any cost. AT&T objected to our procedures on the grounds that the degree of review we proposed is unwise and overactive, and might even be illegal. FTCC stated opposition to our more thorough review on the grounds that the present review process is cumbersome and slow, and that increased oversight will necessarily exacerbate this situation. GTE and RCAGC supported our proposed procedures, but stated that clarification is needed on the question of the applicability of the semi-automatic grant in the case of opposition from interested parties.

20. Other comments and suggestions regarding the Commission's procedural proposals included the following:

(a) *Factors to be Considered:* FTCC commented that, while the Commission has stated that various factors (service quality, increased competition, lowered collection rates) will be considered in the analysis of waiver requests, in fact the Commission consistently bases its determination on a single factor, the increase or decrease of revenues to the IRC industry as a whole. FTCC argued that the other factors are at least as significant as this single one, and that mere "lip service" to those factors is unacceptable. FTCC warned of the U.S.' growing reputation for intransigence, a result of the FCC—imposed inflexibility in negotiations. Western Union and FTCC suggested in their filings that we review these standards, and the factors we enunciated in our 1980 statement. FTCC stated that the Commission has confined its waiver evaluation to "a single, narrow-focused criterion: does the proposed accounting rate change result in an immediate increase or decrease in the total revenue accruing to the U.S. carriers as a group?" FTCC comments, p. 13. FTCC suggested that we consider the following additional factors: effect on reductions in the collection rates, effect on competition in the United States, effect on diversion of traffic to PTTs, and effect on the standing of the U.S. in the world community.[41] Western Union also criticized our heavy reliance on the single factor of whether the proposed change would decrease overall U.S. revenues and suggested that we instead adopt as our guideline a determination as to "whether the proposed rate is an equitable one, all factors considered." Western Union Comments, p. 4.

(b) *Needed Clarification:* Several commenters noted that the language of the NPRM leaves open to question the application of the "automatic grant" in the case of a waiver request which is contested but upon which the Commission staff has not acted within the 60-day period.

(c) *Anonymity:* MCII suggested in its comments that waiver requests and all filings related to them be made available to the public only after removal (by the FCC staff) of any identifying marks. According to MCII, this approach would result in greater freedom and straightforwardness in the carriers' filings and responses, as it would decrease the probability (and therefore the fear) of foreign correspondent retaliation. This proposal met with little response from other commenters.

(d) *Flexibility:* Western Union commented that the Commission's procedural proposals seem to diminish still further the already-inadequate flexibility of negotiation accorded the USISCs. Western Union recommended that the Commission's requirements and involvement be kept to an absolute minimum.

21. *New issues raised in the pleadings: the exemption of small carriers from the requirements of the USP:* FTCC and Graphnet proposed, in their comments, that small carriers (those without market power) be exempted from the requirements of the USP. FTCC argued that the USP, as it is presently applied, sharply restricts the ability of the IRCs to compete with the overseas carriers that are draining away the U.S.' outbound telex traffic, and permits the larger, dominant IRCs to retain their dominance and to prevent new or smaller carriers from obtaining significant shares of the market. While FTCC believes that the policy is needed to promote competition and to safeguard U.S. interests, it argued that the USP, in its present form, "coddles the cartel" and thwarts attempts to establish true (and beneficial) competition. FTCC argued that this situation could readily be ameliorated, by exempting from the terms of the policy those carriers found to be non-dominant.[42] Without specifying a threshold or cut-off point, FTCC suggested that those carriers without market power, *i.e.* those too small to have a significant effect upon total industry revenues—of which there are presently two—should have the freedom to reduce their outbound expenses, and thus become more viable competitors of the dominant carriers.[43] Graphnet set the guideline for "small carrier" as follows: if a carrier is so small that its lowering of settlement rates would not result in other carriers' lowering of their settlement rates, then it should be exempt from the USP.[44] FTCC suggested that any new carrier seeking entry to international markets could seek this USP-exempt status at any time. Graphnet agreed that the Commission should establish a guideline based on a carrier's percentage of the total market, so that any carrier below that percentage for any given market would qualify as USP-exempt until such time as its percentage rose beyond the cut-off. FTCC noted that, under its proposal, when an exempt carrier grows enough to become a significant market factor, the Commission can review its status, on the Commission's own motion or at the request of another carrier. Both exemption proponents observed that where any USP-exempt arrangements result from whipsawing, the FCC will undoubtedly be notified by competing carriers. The proponents suggested that this exemption would encourage new entrants, would help new and small carriers establish a foothold, and would allow for meaningful competition with resellers and refilers.

[41] FTCC suggested that we also do more than "pay lip service" to our own stated considerations of improved quality and competition.

[42] FTCC referred to the Commission's recent *Competitive Carrier* and *Computer III* pronouncements, discussed more fully below. We note that this use of the term "non-dominant" differs from the interpretation established in *Competitive Carrier*, where we found all IRCs non-dominant. International Competitive Carrier Policies, FCC 85-585, released November 15, 1985, at para. 85. The FTCC definition of non-dominance is "haveing no significant effect upon total industry revenues." Our own definition of non-dominance, established in *Competitive Carrier*, "cannot be made in scientifically precise terms," but includes analysis of such factors as marketshare, rate of return, control of facilities, and actual or potential competition. *Id.* at para. 42.

[43] FTCC noted that the Commission could set limits—perhaps 25%—on the deviation from the standard accounting rate that an exempt carrier could negotiate. FTCC stated that this limitation would preclude any opportunity for whipsawing.

[44] Graphnet sees market power as an approximate reflection of a carrier's circuit capacity: a PTT may play off two carriers in order to get a favorable rate from one, but if the carrier ultimately proposing the best rate has insufficient capacity to meet the PTT's needs, no whipsawing can occur. Replying commenters rejected this approach because circuit capacity is so readily expandable; *See infra.*

22. This exemption proposal received strong negative reaction in the reply comments of ITTWC, MCII, RCAGC, TRT, and Western Union. ITTWC argued that allowing exemptions on the basis of minimal capacity and facilities would be specious, since such conditions are changeable. Thus, ITTWC argued, whipsawing would still occur if the smaller carriers were allowed to change accounting rates at will: It might simply take longer to happen. MCII argued that FTCC's proposal is contrary to the deregulatory goals of the statute,[45] and that under Graphnet's proposed guideline (a carrier large enough that its change in rates would pressure other carriers to change as well), no carrier could be exempt, because historically even the smallest carrier has proved to be a viable tool for whipsawing.[46] Further, stated MCII, circuit capacity is multipliable in a matter of weeks, and is thus a useless determinant of a carrier's market power. RCAGC noted the dual purposes of the USP—to promote a competitive U.S. telecommunications industry, and to assure that the benefits of such competition are not diverted overseas—in stating that no exemption from the rules is warranted. RCAGC stated that the smaller carriers are particularly vulnerable to PTT manipulation. RCAGC further stated that the rate reductions proposed under such exemptions would be ineffective in combating resale and refiling. TRT stated that the protection offered by the USP derives precisely from the policy's insistence that foreign administrations deal with *all* U.S. carriers on the same terms. Any exemption would nullify that protection by allowing foreign administrations to play the exempt carriers (individually or as a group) against the larger carriers, regardless of the circuit capacity or market power of the exempt carriers, according to TRT. Such an exemption policy would serve as an invitation to whipsawing, argued TRT, and would serve as an indicator to the PTTs of where to direct their efforts. Finally, TRT noted, the legal basis for a domestic dominant/non-dominant distinction is absent in the international arena, where the operative fact is the monopolistic character of the foreign correspondent Western Union stated that the FTCC-Graphnet proposal is without merit, and notes that the Commission has previously found that all international non-MTS carriers are non-dominant, and therefore indistinguishable from each other for the purposes of the proposed exemption-granting.[47] Western Union took issue with Graphnet's minimal-capacity argument by noting, first, that substantial telex service can be rendered on very little circuit capacity, and second, that capacity expansion or multiplication is readily accomplished. Second, Western Union noted that the Commission's reduced reporting requirements mean that a small carrier which was allowed to reduce its rates could very rapidly become a large carrier, realizing huge profits and perhaps setting a new, lower rate industry-wide in the "many months" before the Commission detected the traffic shift and brought the carrier back under the policy's coverage.

II. Discussion

23. The uniform settlements policy exists to protect the U.S. public interest by helping U.S.-carriers resist pressure to make concessions which may ultimately be detrimental to U.S. ratepayers. Development of the policy was brought about by the unique situation of the international telecommunications market, where numerous competitive U.S. carriers are faced with monopolistic, quasi-governmental foreign administrations. Absent the USP, the natural result of the introduction of competition in the U.S. market is the potential for manipulation by the monopolistic entity of the competing U.S. private entities—manipulation in the form of playing the U.S. companies against one another so that the benefits of U.S. competition accrue not to the U.S. public, but to the foreign administration. The USP deters the individual U.S. carrier from agreeing to terms which disserve the U.S. public interest, in the hopes of "pleasing" the foreign correspondent to the end of obtaining more return traffic or other perquisites. The policy is thus designed to protect not the U.S. carriers, but U.S. ratepayers, and accordingly any proposed modifications of the policy must be considered in light of their effect on the U.S. public interest.

24. Absent the USP, operating agreements would more directly reflect the advantageous marketing positions of the PTTs. The result would be a loss of revenues to the U.S. industry, and ultimately a loss to the U.S. public. A revenue loss to the U.S. industry produces a diminished ability on the part of the carriers to reduce the collection rates they charge their customers, or to provide increased services for the same rates. To allow whipsawing of the U.S. carriers by the PTTs would be to allow those administrations to claim for themselves and their customers, to the detriment of the U.S. public, the benefits of the competition among U.S. carriers. As discussed above, the comments received in the this rulemaking are virtually unanimous in supporting continuation of the USP.[48]

25. On the other hand, we are well aware of the costs of this policy's application. Though we believe that U.S. Telcom significantly overstates when it argues that "the uniform settlement rates policy has tended to minimize, If not eliminate, true competition in the international market,"[49] we do realize that application of the USP tends to preserve the *status quo*. We believe as the comments of NTIA state, that "the need for government oversight to prevent abuse . . . should be balanced with the need to minimize regulatory intrusion in complicated, dynamic sector business operations."[50] The waiver policy that we enunciated in 1980 recognizes that nonuniformity may sometimes further the interests of the U.S. public by stimulating new carrier entry, lower collection rates, and improved services. Our modified policy of considering waiver requests, further discussed below, is designed to allow us to make the balanced and informed determinations necessary to assure that the public interest is served.

26. In our NPRM we tentatively concluded that the USP should be retained in its present form (though procedurally strengthened, as discussed below), but we also solicited comments on alternatives to the USP. We mentioned that the initiation of any new policy or method would require negotiation with the PTTs. The alternatives we proposed included:

(a) Abandonment of the policy, and reliance on competition;

(b) Sender-keep-all;

(c) Accounting rates tied directly to cost of service provision; and

(d) Greater Commission oversight or responsibility for negotiation of terms.

The commenters, as noted above, supported continuation of the policy (with or without various modifications); those who did discuss our proposed alternative approaches uniformly rejected them in favor of the present

[45] *See* Section 222 of the Communications Act of 1934 as amended.

[46] Reference is made to the Commission's recent order, FTC Communications, Inc., FCC 85-249, released May 14, 1985.

[47] This is a reference to our recent *Competitive Carrier* order, *supra* note 42.

[48] Only U.S. Telecom urges discontinuation of the policy.

[49] U.S. Telecom Comments, p. 4.

[50] NTIA Comments, p. 2.

policy. The comments stated: (a) Elimination of the policy would place the U.S. Industry (and U.S. ratepayers) at the mercy of the PTTs; (b) sender-keep-all (SKA) is unacceptable because of the significant imbalances of traffic flow, not only from service to service but also from carrier to carrier;[51] and (c) cost-based accounting rates would be extremely difficult to implement equitably.

27. We thus affirm the validity of and need for the uniform settlements policy. With this Order, in recognition of both the strengths and the weaknesses of the policy, we set forth modifications of USP procedure and clarifications of its scope and objectives. We believe that these changes will strengthen the policy and increase its efficacy so that the benefits of our pro-competitive policies accrue to U.S. users rather than to foreign PTTs.

A. Application of the USP to Transit Traffic

28. As the NPRM noted, we recently released an order clarifying our position with regard to the application of the USP to transit traffic where it is clear that the transit route "has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and US. ratepayers." *RCA Global Communications v. The Western Union Telegraph Company, supra* note 6. That application of the USP was based on the then-current policy and guidelines for use, and was not dependent upon considerations in this rulemaking. The Western Union transit traffic arrangement challenged by RCA was found, in effect, parallel to the direct routes of other U.S. carriers serving the same points, but with the impermissible difference that "the foreign correspondent's share of the accounting rate [was] *increased* by the addition of a third (transiting) entity . . . ." *Id.* at para. 5, emphasis added.[52] We stated there that "transit arrangements which have no apparent legitimate justification must be scrutinized in the interests of preventing whipsawing with its concomitant reduction in U.S. carrier revenues and, most importantly, its diminishing of U.S. carriers' ability to reduce collection rates." *Id.* The question remaining to us in this proceeding is to what extent the USP applies to transit traffic generally—*i.e.*, aside from those cases which are clear violations of the spirit and objectives of the policy. The Western Union service under scrutiny in the case was neither typical nor representative of transit arrangements in this regard.

29. The commenters who took up this issue urged almost uniformly that USP application to transit traffic be restricted to the sort of clear violation mentioned above.[53] Many commenters supported our earlier rationale favoring monitoring but not regulation of transit traffic:

> Transit routes are frequently used as a means of offering service where direct routes are not yet available, and as a means of entry by a new or not-yet-established carrier. They may also be used during the period of negotiations to establish direct routes. Several transiting routes may be used by the originating and terminating administrations, different facilities may be employed by the intermediary state for similar traffic between the same originating and terminating states, and compensation may be made pursuant to contract or tariff. Therefore, settlement rates for transiting traffic are not ordinarily required to conform with the settlement rates direct traffic routes in all respects.[54]

Also discussed was the recommendation of the International Telecommunications Union (ITU) that transit traffic tolls be split 50–50 between the terminal administrations, with the cost of transit also shared by them CCITT Recommendation D.60.[55] We affirm here our belief that transit traffic's historical freedom from strict Commission regulation offers certain benefits, and expands the flexibility of new or small carriers in establishing operating arrangements, and their opportunities for market entry. We further affirm, however, our intention to monitor both transit and indirect traffic arrangements very carefully.[56]

30. As to a definition of transit traffic, we can adopt neither MCII's nor FTCC's proposal, since both ignore the distinction between true transit and indirect traffic. While the term "transit" is commonly used to encompass both, the distinction is important. We will broadly define transit traffic as that which incorporates switching at one or more intermediate international exchanges between its point of origin and its point of destination.[57] True transit traffic, however, involves the U.S. not as an originating or terminating carrier, but as the intermediate carrier. Indirect traffic, on the other hand, while often subsumed in the general "transit" rubric, is traffic that is switched through an intermediate, third country, but which has as one terminal point a U.S. carrier (and U.S. users). It is this latter, indirect traffic, which has posed the harder questions—such as the WU–COMTELCA arrangements discussed herein. The question of when an indirect, "transit" arrangement is clearly violative of the USP's spirit and objectives, is designed to circumvent the policy's requirements, and must therefore be considered parallel to direct traffic arrangements and subject to the full panoply of USP regulation remains open.,

31. We have approached resolution of this question in two previous orders as well as in this rulemaking proceeding, and we rely now upon the viewpoints and experience gained in those proceedings to set forth a guideline in this matter. In our *RCAGC* order of June 28, 1985 (note 6, *supra*) we noted that the objectionable transit arrangements constituted a "transparent ploy" because the addition of a third (transiting) entity increased the terminal foreign correspondent's share of the accounting rate. In a Common Carrier Bureau order on the same matter,[58] Western Union's proposal for modified transit operating agreeements was found satisfactory becasue it eliminated the possibility that the foreign administration would have higher revenues for transit traffic than it could have for direct.[59]

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[51] For example, the overall balance of Europe-U.S telex traffic is significantly inbound to the U.S., so that SKA would be beneficial to the European administrations and would cause the U.S. carriers overall to suffer substantial revenue losses. (Those smaller U.S. carriers having more outbound than inbound telex traffic would gain). Revenue losses to the U.S. industry would result in the decreased ability of the carriers to reduce rates and improve services, to the detriment of the U.S public.

[52] In that case, we order Western Union to modify its operating agreements for telex service to the nations in question to bring their terms into accord with existing agreements.

[53] See discussion of comments, *supra* at part I.D. (1).

[54] NPRM, para. 33. We also stated there our intention to monitor transit traffic, closely, on an *ad hoc* basis, for consistency with other area traffic, and for indications of whipsawing. *Id.*

[55] We note that this arrangement generally results in a division of approximately 40–20–40.

[56] To this end we note that a recent NPRM, In Re: Amendment of §§43.51 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements, FCC 85–601, released November 21, 1985, must be modified to the extent that it proposes to eliminate those filings for transit traffic which will allow us to maintain this oversight. Accordingly, the proposed rules in the Appendix of that document are hereby modified by deleting from rule § 43.53(a) the words "other than transiting."

[57] *See* note 25, *supra*. We note that CCITT Recommendation D. 60 offers a very similar definiton, *i.e.*, "A transit relation is a relation between two terminal Administrations where traffic is routed by switching in an international transit exchange(s) located in a country or countries other than the country of origin or the country of destination."

[58] RCA Global Communications v. The Western Union Telegraph Company, File No. E–83–24, Mimeo No. 7096, released September 17, 1985.

[59] We note that the September 17 Bureau order is presently under reconsideration, and accordingly direct that the Bureau issue an order on reconsideration consistent with our rulings here.

We wish to avoid creating incentives for the creation and maintenance of indirect as opposed to direct traffic routes, not only because indirect routing is undesirable from the point of view of technological and economic efficiency, but also because it so easily creates a patently unfair situation which ultimately disserves the U.S. public. While we have not to date stringently regulated the terms of indirect traffic routes, we have noted that such service is clearly meant only as a substitute for direct traffic, and as such should be held to similar standards of uniformity and fairness. While we intend to maintain a flexible, lenient approach to indirect routing, we state now that any U.S. carriers establishing such arrangements will be expected to adhere to the guidelines of CCITT Recommendation D.60, establishing equal division of tolls between the terminal administrations and sharing between them of the costs of transit, absent a persuasive showing in support of some alternative arrangement. This approach maintains fairness and flexibility by establishing a clear and equitable guideline for division of tolls for transit traffic, while allowing for departure from that guideline upon a showing of good cause.[60] Objections to such arrangements may be raised by means of a complaint by any interested party or by this Commission *sua sponte*. We further state, moreover, that we will continue to monitor both transit and indirect traffic assiduously.

B. Application of the USP to New Services—Voice and Enhanced

32. *Voice Services.* Only very recently has the question of competitive U.S. carriers arisen with regard to international voice services. As long as only one U.S. carrier provided international switched voice service (IMTS), that carrier stood in a position roughly equivalent to its foreign correspondents, so that whipsawing was not a possibility or a problem. As competition develops, however, AT&T's quasi-monopoly status begins to disappear, and the IMTS market begins to exhibit the characteristics common to other fields of the international telecommunications market where whipsawing exists.

33. We first considered the possiblity of applying the USP to voice services in an April 1985 case involving U.S.-Canada IMTS traffic.[61] There, the Common Carrier Bureau considered, but declined to resolve, the question of whether the USP applies to non-record services. The Bureau said:

As our open entry policies place additional carriers into the international market, an individual carrier's ability to withstand pressure from a PTT may decline. As whipsawing increases, the benefits of a more competitive market may be transferred from U.S. users to the PTT. . . . We have recently witnessed the emergence of competition in the provision of international switched voice service. MCI, GTE Sprint, SBS, AT&T and others provide or may soon provide international switched voice services. There may be no distinction between telegram, telex or switched voice services, in considering the scope of the Commission's uniform settlements policy; in this view, more than one U.S. carrier is providing a particular service to an overseas point, the potential for whipsawing exists, and therefore, the policy applies. On the other hand, there may be differences between voice and record services which warrant the nonapplication of the uniform settlements policy to the voice market: in this view, traffic and revenue flows may make whipsawing more difficult, and this, together with our strong desire to facilitate the entry of U.S. carriers, would lead us to conclude that the policy need not apply. Under either view, the exact scope of the policy would be more appropriately reserved for a more general proceeding.[62]

34. Certainly until very recently our attention in USP matters has been on the IRCs, and specifically on the provision of international telex service. The focus of the uniform settlements policy, however, has been not on a specific service, but on the assurance of bargaining parity and fairness, and the protection of the U.S. public interest. Our NPRM noted:

* * * the conditions considered in forming the [uniform settlements] policy (*i.e.*, conditions conducive to whipsawing) may be present in the voice as well as record services markets: multiple service carriers in the U.S. negotiate with single PTT entities overseas who can be expected to attempt to maximize their revenues via accounting rate manipulation. With the entry of additional carriers into the MTS market and the development of parallel routes, there may be a need to protect domestic ratepayers from the long-term effects of pro-PTT accounting rates.

NPRM, para. 35, footnotes omitted. Comments in the MCI-Canada case were split on the question of application of the USP; comments in the present proceeding, as noted above, favor application of the policy.[63]

35. It is clear that the USP was designed to deal with a market situation and not a particular technology or service type. MCI's comments in the Canada case regarding language limiting the USP to 'record carriers' are noted.[64] This language, however, was used interchangeably with other, non-restrictive phraseology, and indicates only that we did not then anticipate the development of competition in the voice market, rather than that we desired to limit the policy's scope. As competition develops in the provision of voice services, the potential for whipsawing could increase. The harm to be suffered from the whipsawing of IMTS carriers is the same as that suffered in the whipsawing of record carriers—the shifting of the benefits of U.S. competition (and of revenues) to the PTTs, to the detriment of the U.S. public interest. We therefore conclude that the USP should be expressly extended to include international voice services.[65]

36. We do, however, recognize that at the moment, and for the immediate future, the IMTS market is very different from the telex and other record markets. IMTS traffic flow is significantly outbound from the U.S., and one carrier (AT&T) has a significant majority of the market; these characteristics reduce somewhat the ability of the PTTs to whipsaw U.S. voice carriers. As we have noted before,[66] flexibility and nonuniformity can be important tools in allowing the new entrant to establish a toehold.[67] The U.S. public has already

[60] We recognize that many current transit arrangements do not adhere to this guideline, and we will allow a reasonable period of time—a period of 180 days from the release of this order—for the carriers to bring their arrangements for indirect traffic into conformity with this ruling or to file waiver requests establishing good cause for departure therefrom.

[61] MCI Telecommunications Corp. *et al.*, CC Mimeo No. 3874, released April 16, 1985.

[62] *Id.*, para. 12, footnotes omitted.

[63] All commenters who discussed the question either supported or at least accepted the validity of applying the USP to voice services. AT&T and HTC both suggested hands-off monitoring until such time as actual instances of whipsawing can be demonstrated.

[64] *See* MCI comments in that case noting several references, in USP-related orders, to 'record carriers' as opposed to simply 'carriers.'

[65] As noted in the NPRM, we believe that changes in the structure of the international voice market may justify corresponding changes in our USP application. As competition develops in the provision of international services in foreign markets (*e.g.*, the entry of a second carrier (Mercury) in the U.K. as an international switched service provider between the U.K. and the U.S.), it may be desirable to relax the application of our policy to those markets. This relaxation, accomplished through the liberal granting of waiver, would be considered on an *ad hoc* basis, taking into account all relevant factors and conditions.

[66] *See, e.g.*, Uniform Settlement Rates, 84 FCC 2d at 128.

[67] As AT&T noted in its comments, p. 7, "Non-uniformity in accounting rates is not necessarily an evil, as long as the non-uniformity does not flow from whipsawing."

begun to benefit from this situation, as competition and the anticipation of competition have produced significant rate reductions and increased service options. Although we have previously noted our belief that increasing competition in the IMTS market may produce conditions conducive to whipsawing, we are also aware that the above-cited factors, innate attributes of the international voice market, naturally combat any such manipulation. We therefore find that the USP should be applied to voice service, but that rigid application of the policy could serve to impede the development of competition, and is unnecessary in view of the unique market situation. Accordingly, while the filings discussed at para. 48 herein will be required for any modification of IMTS service, we expect such filings to meet with the 60-day semi-automatic grant, absent showings of demonstrable detriment to the U.S. public interest [68] or abuse of our policy of uniformity.[69]

37. *Enhanced Services.* We tentatively concluded in the NPRM that we have the authority to apply the USP to international enhanced services, but that such application need not (and should not) be undertaken at present. We affirm this conclusion.

38. As noted above in part I.D., the comments received in this proceeding discussed thoroughly both the authority of the Commission to impose constraints upon international enhanced services, and the desirability of our doing so. Some commenters stated that we have no authority whatsoever to apply the USP to enhanced services,[70] some that we may apply the policy only to common carriers providing enhanced services, but not to non-carriers providing the same or similar services,[71] some that we have authority to dictate certain activities of *all* enhanced service providers who have operating agreements with PTTs, whether these providers are common carrier-related or not.[72] It is argued that our basic/enhanced distinction may well be disappearing,[73] is not understood nor used by our foreign correspondents,[74] and must for practical purposes be abandoned in this regard. Because the PTTs do not distinguish among common carriers, RPOAs and other service providers, this argument runs, neither should the FCC distinguish among them; we should apply our policy—or not apply the policy—identically to all service providers (both enhanced and basic) having operating agreements with a PTT.[75]

39. We note first of all that issues relating to regulation of international enhanced services were fully considered and were settled in our *Computer II International* order.[76] The issue presently under consideration is not the regulation of those services, but whether we can and should apply the USP to non-carrier companies, and/or to carriers providing enhanced as well as basic services. Because no U.S. carrier in the enhanced services market enters that market with a "dominant" position, imposing uniformity on accounting rates by itself will have a limited effect in restraining the bargaining power of the PTTs. However, as the NPRM noted, to leave enhanced services outside the USP might invite PTTs to pressure U.S. carriers to add computer processing functions to a service to transform a basic service into an enhanced service. If enhanced services were excluded, this evolution of basic into enhanced services could give the PTTs the ability to whipsaw in services that are today basic. We noted in our NPRM and in *Computer II International* that we have residual authority under Title I of the Communications Act of 1934, as amended, to ensure the full effectuation of our statutory mandate.[77] Accordingly, we reaffirm our authority to apply the uniform settlements policy to international enhanced services which are provided under operating agreements between U.S. carriers and their foreign correspondents, and we declare our intention to monitor carefully all such service arrangements.[78] Our interest and concern here are the arrangements under which service is provided. Therefore, all such arrangements, *i.e.*, any operating or service agreements between a U.S. service provider and a foreign correspondent, are subject to the terms of the USP. We will defer intervention, however, in the absence of demonstrable abuse.[79] In this way we can further our policy of minimizing regulation in reliance on market determinations, while assuring the safeguarding of the U.S. public interest.

C. The USP and Currency Conversion and Settlement Rates.

40. *Application of the USP:* The issue of currency conversion, specifically conversion to the International Monetary Fund's (IMF's) created currency, the Special Drawing Right (SDR), has stimulated intense debate,

[68] The filing guidelines proposed by AT&T, see note 28, which we adopt herein at para. 48, will require those filing waiver requests to indicate any changes in revenue expected to result from the non-uniform agreement.

[69] This automatic effectiveness can of course be precluded by this Commission (via its Common Carrier Bureau) *sua sponte*, by letter or order stating a need for more information or more time, or stating in what way(s) the proposal is unacceptable. Also, as described above and in our NPRM at paras. 4–7, the individual carrier's balance of traffic is a determinant of benefit or detriment in accounting rate modifications. A proposal of accounting rate changes which results in increased U.S. revenue (and therefore goes into effect almost immediately) will have the effect of *decreasing* the individual carrier's revenues if that carrier's traffic balance changes. At that point the accounting rate will be re-evaluated, upon motion or *sua sponte*, by Commission staff.

[70] *See, e.g.*, Graphnet, T.C.P. and Western Union comments.

[71] *See, e.g.*, ADAPSO comments.

[72] *See* comments of FTCC, GTE, ICA, RCAGC and TRT.

[73] TRT notes, in its comments, that this very transition is taking place, through general technological evolution, in the area of telex service.

[74] *See* TRT comments.

[75] *Id.*

[76] Note 31, *supra*.

[77] We said in *Computer II International Reconsideration*, at para. 71, that in case of conflict or undermining of the policies of this Commission with respect to the provision of enhanced services, we will address and remedy such abuses under our ancillary jurisdiction.

[78] Providers of enhanced services will not be required at this time to provide the filings discussed herein.

[79] For example, when evidence is given of attempts to whipsaw, we will intervene, as we have done in the past. We refer here to the situation which arose in 1982 with regard to the administrations of the Nordic countries (Iceland, Finland, Denmark, Sweden, and Norway), NORDTEL, and their plan to take competitive bids from the USISCs in order to establish an operating agreement "with one, or a limited number of carriers" to provide new data services. NORDTEL's June 1982 letter announcing this plan was followed within several weeks by similar letters from the administrations of Belgium, the Netherlands, and Luxembourg; all referred to "recent deregulatory development in the USA leading up to a changed market system as regards the provision of international telecommunications services." This initiative provoked great concern; the PTT attempt to limit the number of U.S. carriers was viewed as anticompetitive. This Commission has long sought to encourage more carriers to enter international markets, and has expressly criticized any attempts at exclusivity as inimical to the U.S. public interest. The damage is compounded if, as here, the exclusive service provider is not subject to regulation under a strict interpretation of *Computer II*. Further, the receipt of virtually identical proposals from other CEPT members exacerbated the situation.

Both the FCC and the State Department became involved in this exchange. This Commission suggested that the U.S. service providers not respond to the PTT request for competitive bids until completion of a period of study and analysis. The involved PTTs were informed of this undertaking. The study and analysis undertaken by our staff revealed the probability of whipsawing; eventually the PTTs dropped their efforts to elicit competitive bids, and the usual negotiating procedure, involving numerous U.S. carriers, was invoked.

both in this proceeding and in the periodic FCC–IRC meetings.[80] While all the IRCs agree that they have made some commitment to universal conversion to SDR accounting, ideally by 1988, the degree of commitment and the methodology to be used to achieve conversion have been subjects of debate.[81] The NPRM refers to an "obligation" to convert to SDRs by 1988. That obligation arises from a 1980 meeting in The Hague of representatives of CEPT [82] with representatives of the IRCs. Although no formal agreement resulted from this meeting, a series of correspondence immediately preceding and following the meeting indicates the agreed intention of the parties to convert to SDRs.[83] The perceived degree of commitment varies from carrier to carrier; where one carrier sees an absolute commitment, creating an automatic conversion to SDRs upon request of any CEPT administration, another sees only a general statement of intent.

41. *RCAGC Complaint:* These antipodal positions are clearly represented in a complaint now pending before us, *RCA Global Communications, Inc. v. TRT Telecommunications Corporation and FTC Communications, Inc.*, File Nos. E–85–49 and E–85–50, filed in September 1985.[84] The undisputed fact is that TRT and FTCC have agreed to, and implemented, SDR settlement terms with several CEPT administrations with whom the other U.S. carriers settle in gold francs.[85] RCAGC charges that these non-uniform settlement terms, absent the concurrence of the other IRCs or an express waiver by the Commission of its USP, are in violation of that policy and should therefore be barred. The defendants respond that the 1980 correspondence between CEPT and the IRCs constitutes an absolute agreement to convert to SDRs, which requires for its effectuation only a PTT request to any signatory IRC.

42. As noted at para. 16 above, we discussed the issue of conversion to SDRs in the NPRM. Paragraph 38(2) of the NPRM states:

> Because the uniform settlements policy requires uniformity of terms, rates, and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits.

This is not a tentative conclusion, but a statement of definition of the policy as it then stood (and now stands). In the introductory paragraphs of the NPRM we stated, in defining the USP and its requirements, that ". . . the operating agreements must stipulate . . . (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually gold francs (GF), U.S. dollars, or special drawing rights (SDRs))." NPRM, para. 2. Elsewhere, reference is made to our 1980 policy statement on the USP, *Uniform Settlement Rates*, 84 FCC 2d 121 (1980), which is the source of that definition.[86] Not only do our formal statements thus establish unequivocally that SDR conversion is a modification of terms of operating agreements (specifically, of settlement rates) such as is prohibited under the USP, absent waiver; industry history and practice confirm this assertion.[87]

43. The policy's terms are clear, and its application here is straightforward. The conversion by TRT and FTCC to SDR accounting with the administrations of the above-named nations, with benefit of neither a waiver of the policy by this Commission, nor the concurrence of the other IRCs serving those administrations, violates the uniform settlements policy. The Common Carrier Bureau is therefore directed to act upon the complaint in an order consistent with these findings.[88]

44. *Procedure:* The second issue arising with regard to the matter of conversion to SDRs is the question of procedure—a question already touched upon here.[89] In the NPRM we briefly discussed various methods of conversion, but left to the carriers the determination of methodology. Comments mentioned the use of CCITT Recommendation D. 195,[90] the use of floating coefficients,[91] or the rejection of any coefficient by direct SDR negotiation.[92] The last, direct conversion, is suggested in a recent memorandum prepared by an *ad hoc* working group of the FCC/IRC meeting group as the only practicable approach. The memorandum notes that operating agreements are periodically renegotiated, and suggests that the next round of negotiations with each and every foreign correspondent establish accounting and settlement rates in SDRs, directly and without use of any linking coefficient.[93] Among the benefits

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[80] *See* note 9, *supra*.

[81] At recent FCC–IRC meetings, one carrier representative has taken care to note that settlement by gold francs is also acceptable under the ITU CCITT Recommendation discussed *infra*, and that it is therefore possible that no commitment to conversion to SDRs need be acknowledged.

[82] CEPT is the Conference Europeene des Administrations des Postes et Telegraphes, a consortium of 26 European PTTs.

[83] This correspondence is being placed in the docket.

[84] *See* note 11, *supra*.

[85] RCAGC charges that both FTCC and TRT have accepted SDR settlement terms with Finland, France, Norway and Spain. TRT agrees that it has begun to settle in SDRs with France, Norway and Spain, but not with Finland. FTCC states that it does not settle at all with Finland or Spain, but that it does indeed settle in SDRs with France and Norway

[86] "The 'settlement rate' is the rate established for converting currencies to settle accounts." 84 FCC 2d at 122 (1980).

[87] The fact that various (CEPT and other PTT) requests to effectuate conversion to SDRs have frequently been considered, discussed, debated—and, occasionally, agreed upon—in the FCC/IRC meetings belies any assertion that each carrier is free—let alone obliged—to institute DSR settlements without formal procedure (*i.e.*, waiver request).

[88] We also note that TRT has filed a request for waiver of the USP with regard to its operating agreements with France, Norway and Spain. This waiver request also will be acted upon by the Common Carrier Bureau.

[89] As noted above, the conversion of currencies is a change of operating agreement terms, and any such conversion which involves fewer than *all* U.S. carriers serving the relevant foreign correspondent must be undertaken only upon our granting of a waiver.

[90] Recommendation D. 195 provides for SDR conversion as follows: (a) Convert gold francs to SDRs using a linking coefficient of 3.061 GF=1 SDR; convert SDRs to currency of payment by the daily published exchange rate; or (b) convert directly to the currency of payment by application of fixed coefficients currently in use, or by establishing mutually agreeable new or modified coefficients.

[91] *See* RCAGC Comments, pp. 12–13.

[92] *See* "Settlement of International Telecommunication Balances of Accounts;" working group memorandum of October 31, 1984, included in the docket. This memorandum notes that the carriers' stances on SDR conversion are dependent on their balance of traffic (and thus on their being debtors or creditors *vis-a-vis* a given foreign correspondent) and on the fluctuating value of the dollar. (Only if the SDR equals $1.21 could all carriers convert directly from dollars with no gain or loss, the memorandum states. The SDR currently equals about $1.05). The memorandum notes that while the initial gain or loss through conversion may be significant, the difference over time will likely be even more so. For the U.S. industry as a whole, according to the paper, gains would roughly equal losses in conversion using the CCITT's linking coefficient of 3.061 GF to one SDR. (Of course this is accomplished by balancing one carrier's losses against another's gains, and so fails to provide a universally acceptable solution to the problem). The memorandum notes that the other recognized conversion method, where one dollar equals 2.5374 gold francs and the current dollar—SDR exchange rate (or, as is sometimes suggested, $1=1 SDR) is used, creates the same magnitude of imbalance, in the other direction.

[93] The IRCs could figure their rates in dollars, then use the current exchange rate to convert to SDRs. No immediate gains or losses would be experienced, and future gains and losses would be tied, as is always the case, to international currencies and exchange rates.

of this approach, according to the memorandum, are: it avoids the linking coefficient quagmire which is a controversial and largely nonessential stumbling block to conversion; it promotes international comity by effecting conversion to SDRs; it brings the international telecommunications industry into accord with other industries and agencies, national and international, which have already converted to SDRs; it brings international record services into accord with international voice services (specifically AT&T) which generally account and settle in SDRs; and it ends the otherwise insoluble turmoil among the IRCs over this issue.

45. While we decline to prescribe the exact methodology the carriers should use to effect conversion to SDRs, we accept the analysis and conclusion of the memorandum, and encourage the international carriers to do likewise. For the reasons given, negotiating new operating agreements in SDRs without the use of any conversion factor or linking coefficient, but only the current dollar/SDR exchange rate, seems the best solution to this problematical situation. We have previously stated our intention to be receptive to waiver requests designed to effectuate this goal; [94] we reiterate that intention here. Nonetheless, we recognize the very different positions of our IRCs due to difference in traffic flow and in existing settlement rates, and we very strongly urge that the IRCs take the earliest opportunity to establish accounting rates in SDRs with any and all willing correspondents, and to tie their SDR exchange to the published market exchange rather than to a fixed coefficient.[95]

D. Exemption of "Small" Carriers From the Requirements of the USP

46. As noted above, the suggestion in the comments of both FTCC and Graphnet that those carriers "without market power" be exempt from the requirements of the USP elicited strong and uniformly negative responses from the other commenters. We find some merit in the concept, however, though not to the extent of supporting an exemption. First, it is probably impossible to propose a workable definition of "small carriers."[96] Second, although FTCC and Graphnet have argued that in a truly competitive market, the practical likelihood of whipsawing of the largest carriers over changes (*i.e.*, rate reductions) by the smallest carriers is slight, in fact it has historically been the smallest and/or newest carriers which are used for this purpose. FTCC stated that a carrier which was granted a waiver, and whose lower rates then brought it increased return traffic, would approach the overall U.S. position on traffic flow, therefore ceasing to be a "small carrier," and would naturally therefore seek to conform its rates to the uniform general rates. We find it doubtful that the PTTs would willingly cooperate in this "natural" progression, or would fail to attempt to use the lower accounting rates of the "exempt" carriers to whipsaw the other carriers. The result would necessarily be increased intervention (and regulation) by this Commission. Therefore, we cannot agree to exempt such carriers from the terms of the USP, but we do feel that a slightly more lenient application of the policy's requirements may be appropriate, in certain circumstances, in the cases of small carriers. The size—or lack of market power—of the waiver proponent, as well as the carrier's traffic flow balances and the impact on other carriers of grant of a waiver, will therefore be included in the factors we consider in waiver request determinations. We also intend to review the resulting market situations diligently and frequently, to assure that other carriers serving the same points suffer no undue ill effects, and we reserve the right to revoke such waivers immediately (upon notice), either *sua sponte* or in response to requests or complaints from other carriers.[97]

E. Implementation of the USP

47. In the NPRM we suggested that the USP has not proved as effective as it should be, and that this problem might be resolved in part by modifying our procedural approach. Out tentative conclusion was that this Commission must undertake to review more thoroughly any and all operating agreement modifications, in order to assure that our carriers and service providers are not whipsawed, and that the benefits of competition among our carriers accrue to U.S. ratepayers rather than solely to the PTTs. We have found that whipsawing continues to occur, and that the tactics of the PTTs have become more sophisticated. The strategy of holding monthly meetings of representatives of the IRCs together with representatives from the FCC was an attempt to balance the bargaining positions of the parties in negotiations regarding international service agreements. It was hoped that by increasing coordination and cooperation among the IRCs, we could avoid or at least minimize their whipsawing by the foreign entities. However, because the IRCs having varying commercial interests, and thus varying positions on accounting rate proposals, unanimity is unlikely. Therefore, although we will continue to hold periodic IRC/FCC meetings, we find that additional measures are necessary.

48. *The Sixty-Day Semi-Automatic Grant.* In order to further the goals of the uniform settlements policy, we proposed in the NPRM to assure early, complete and informed Commission review of each and every modification of the terms, rates, or toll divisions of operating agreements for services where more than one carrier or service provider offers a particular service to a particular foreign jurisdiction. As noted above, the response to our proposals was generally positive. We therefore adopt the following procedural requirements, which we believe will not be burdensome or impose delay: each proposed modification will be submitted to this Commission and will be placed on a sixty-day timetable.[98] Further, each waiver request will be accompanied by the information proposed by AT&T in its comments, in the format indicated in Attachment A hereto.[99] Waiver applications will be placed on Public Notice when filed. This notice will start a twenty-one day filing period for objections or comments. Thereafter, reply comments may be filed within ten days. In the remaining twenty-nine day period the staff will review the waiver application. The staff can raise objections or questions either *sua sponte* or in response to the submitted filings.

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[94] NPRM para. 38.

[95] *See* the Comments of RCAGC at pp. 12–13.

[96] We reject the commenters' proposals: FTCC spoke of "Carriers which have been found to not have a significant share of the record communication industry," and went on to refer to a dominant/exempt dichotomy. FTCC Comments, p. 8. Graphnet suggested that the policy apply "only in those situations where a carrier possesses a market share significant . . . to cause other carriers to lower their settlement rates as a result of the smaller carrier lowering its rates." Graphnet Comments, p. 11. Graphnet suggested that a certain percentage of the market be set as an exemption cut-off, but did not suggest what that percentage should be. Graphnet suggested that market share, its determining factor, would be an approximate measure of the carrier's circuit capacity. *See* note 44, *supra*.

[97] Revocation of the waiver would oblige the subject carrier to return to uniform rates, and would preclude his operating under the former, non-uniform terms.

[98] Application of the USP for IMTS is discussed in para. 36, *supra*.

[99] This new procedural approach will necessitate some modifications of the Common Carrier Bureau's present filing and review practices. The Bureau Chief is therefore authorized to make known to the carriers, individually and informally, any consequent requirements of format or filing changes.

This initial review of each application for waiver on its merits will result, at the end of the sixty-day period, in: (1) No formal staff action, in which case the petition will be deemed granted;[100] (b) a staff letter requiring additional information;[101] (c) a staff letter indicating that opposition was filed, but that the filing was found to be without merit (in which case the waiver will be deemed granted on the sixty-first day) (see para. 50, *infra*); or (d) a staff letter indicating that the waiver petition raises complex issues or is opposed, and thus must await formal action by order or letter rather being automatically granted.

49. Our new streamlined procedures meet the concerns expressed in the comments by increasing the carriers' flexibility. Further, our modifications are specifically designed to increase oversight but decrease delay, partially through the implementation of the 60-day semi-automatic grant, and partly through the removal or decreasing of ambiguities in the guidelines on factors to be considered in evaluation of waiver requests. While the speed and efficiency of waiver analysis by this Commission are valid concerns, we feel confident that they are adequately addressed by our proposal.

50. Regarding the question whether the semi-automatic grant can operate in the face of filed comments opposing the proposed waiver, we certainly do not want to creat incentives for competitors to use the regulatory process in order to forestall legitimate changes. If any opposition to the request is filed, a Bureau or Commission letter or order will be needed before the waiver can be finally approved. In this case, as in the case of the Commission's own objection, or our need for further information, a staff letter to the waiver applicant will indicate that the semi-automatic grant provision is *not* in effect.[102]

51. *Factors in Evaluation of Waiver Requests.* As we noted in the NPRM, we do not intend by these proposals to modify the waiver standards we enunciated in 1980. A carrier (voice or record) requesting a waiver of the USP will file a petition, and will have the burden of proof to support its request.[103] Our intention with regard to the evaluation and disposition of waiver requests is to increase our awareness and oversight while decreasing delay and rigidity. We are establishing a new, streamlined procedure which we believe will serve these goals. We are also stating a new, more flexible approach to waiver requests. This approach indicates not only our desire to encourage new entry, competition, and innovation, but also our movement away from the single-factor waiver evaluation here complained of: we have stated our intention to consider those factors named in our 1980 statement, including (but not limited to) lower collection rates, improved services, and increased competition, and have added to these factors the consideration of lack of market power.[104] We expect that our earlier and more thorough awareness of proposed changes, together with our streamlined procedure and our increased leniency (in certain cases) will serve to increase the flexibility of our carriers in their dealings with foreign correspondents. In sum, our Order recognizes that our primary goal is to promote lower prices and better services for U.S. users, and that our secondary goal, necessary to the first goal, is to eliminate whipsawing of U.S. carriers.

52. *Confidentiality and Anonymity:* In our NPRM we suggested that requests for confidentiality in filings in this proceeding would be honored.[105] The issue has arisen before, and is discussed in the comments. There is an anticipation among the carriers, which we find to be supported, that foreign correspondents may retaliate, in their negotiations and operations, against carriers whose filings (in this or other USP-related proceedings) have taken an unwelcome slant. There is also a confidentiality issue with regard to business and financial information submitted in such filings. We are determined that in such cases, requests for confidential treatment will be honored to the extent possible.[106] Filings so treated will be considered and incorporated in any Commission determinations only to the extent that their substance, separated from any identifying characteristics, can be revealed and discussed.

53. As noted above, MCII suggests that all filings in waiver request proceedings be rendered anonymous by the Commission staff. This suggestion too is in recognition of the apprehension of foreign correspondent retaliation. We believe, however, that with the liberal granting of requests for confidentiality we are adequately addressing this concern, and need not take the more extreme measure of rendering all applications and pleadings anonymous.[107]

III. Conclusion and Ordering Clauses

54. We have undertaken a thorough analysis and consideration of our uniform settlements policy—its scope, its implementation, its underlying concerns and justification. We are convinced by this analysis, supported as it is by nearly fifty years' experience, as well as by the pleadings in this proceeding, that the need for a policy of uniformity is well established. As our policies and practices of encouraging competition have contributed to the stimulation of multiple entries in the international telecommunications market, the likelihood that these players will be manipulated by foreign monopolistic telecommunications administrations increases. We are determined that, to the greatest extent possible, the benefits of competition should redound at least as much to the U.S. public as to a foreign correspondent. To this end, rather than in any effort to protect or nurture the U.S. carriers, we affirm and will continue to apply the uniform settlements policy. The policy which we here affirm and modify limits the ability of a PTT to whipsaw U.S. carriers or to engage in other practices which are contrary to the interests of U.S. ratepayers.

55. We recognize and have considered the arguments against this policy, and we acknowledge the possibility that the application of the policy may entail some costs. It may be true, for example, that use of the USP can result in some inertia, in a tendency to maintain the *status quo*. We can see, too, that more delay may be involved when we insist on reviewing and monitoring international transactions and the results of negotiations than would be

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[100] We note that this procedural device of automatic grants of authority is already successfully used in the consideration of applications to extend facilities under § 63.03(d) of our Rules.

[101] The staff may extend the review period in order to analyze a carrier's response to other interested parties' comments.

[102] If, in the opinion of the Commission staff, the objection filed is specious, obstructionist, and without merit, it will not be allowed to block our streamlined process. A staff letter to the applicant and the objecting party will declare such a finding.

[103] Uniform Settlement Rates, 84 FCC 2d at 127, para. 14.

[104] For example, a modification that proposed a rate reduction and included a limitation on the reallocation of return traffic might lead to cuts in collection rates for U.S. customers without putting pressure on other U.S. carriers to change their accounting rates.

[105] NPRM, footnote 65.

[106] Requests for confidential treatment will be unequivocally honored—absent notification to the contrary—unless and until a FOIA request is filed. At that time, a determination will be made using the FOIA's guidelines.

[107] We may do so in a particular case, however, if the facts warrant.

present if the international telecommunications market were conducted entirely without regulatory oversight. Further, it is likely that new entrants and small carriers would have an easier time establishing business relations with PTTs if they could do so under terms typical of open competition, including discounted rates and special concessions.

56. Nonetheless, our primary concern is the U.S. public interest, and we are firmly convinced that to abandon or seriously weaken the uniform settlements policy at this time would be to disserve the U.S. public. The desire of U.S. carriers and other service providers to compete freely is understandable, but when the benefits of this competition would be garnered by foreign correspondents rather than by U.S. customers, the imposition of some restraint is appropriate. The desire of PTTs to acquire for themselves more advantageous rates and various concessions that would be available to them under a U.S. policy of unrestrained competition is only natural, but when the costs of this competition would be borne, unrenumerated, by the U.S. ratepayer, intervention is necessary. As our foreign counterparts adopt more flexible views of competition and free enterprise, we shall certainly reexamine our policies.

57. We have, with this order, modified the procedural implementation of the USP in order to respond to the concerns outlined above. We have announced a determination to view receptively such waiver requests as would serve, by stimulating competition, to ameliorate the tendency to preserve the *status quo*. We have further sought to encourage as much as possible the rapid and smooth conversion of the financial terms of operating agreements into SDRs. We have established a streamlined procedure which will increase the effectiveness and decrease the innate delay of our regulation. We have announced our intention to regulate to the least extent possible; our goal is to assure the service to the U.S. public interest at the least possible expense (in time, cost, frustration of competitive spirit, international comity) to the ratepayer (and, derivatively, the carrier). We find that certain rules must, at the present time, govern U.S. participation in the international telecommunications market in order to safeguard the U.S. public interest.

58. Accordingly, it is ordered, pursuant to sections 4 (i) and (j), 201–205, 218, 220, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201–205, 218, 220, 403 and 404, that the policies, rules and requirements set forth herein are adopted.

59. It is further ordered that all carriers subject to regulation under the uniform settlements policy will henceforth submit to this Commission a request for waiver of that policy in the case of any modification of terms within the purview of that policy, whether or not such modification is adopted or agreed to by other carriers involved in the subject service.

60. It is further ordered that the filing format discussed at paragraph 48 and Attachment A of this Order is adopted, and forms a requirement for all IMTS service providers, said filing to be made initially within thirty (30) days of the publication date of this Order in the **Federal Register**, and subsequently at the time of initiation or modification of IMTS.

61. It is further ordered that the uniform settlements policy is expressly extended to voice and enhance services.

62. It is further ordered that the language of § 43.53(a) of the Commission's rules, 47 U.S.C. 43.53(a) is modified by deleting the words "other than transiting" from that section effective March 10, 1986.

63. It is further ordered that the streamlined evaluation and approval process for requests for waiver of the uniform settlements policy set forth herein at paragraphs 47–53 is adopted.

64. It is further ordered that this proceeding is terminated.

65. It is further ordered that the Secretary of this Commission shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment A

Filings accompanying waiver requests should include the following:

1. A description of the existing arrangement, and of the proposed new or modified arrangement(s).

2. A projection of the revenue effect on the proponent carrier.

3. A projection of the revenue effect on the U.S. industry overall (service-specific).

4. A statement as to whether changes in the methods of allocating return traffic among U.S. carriers were included in the negotiations leading to the change, and if so, to what effect.

5. A statement as to whether there was any attempt by the PTT(s) involved to secure concessions in the accounting rate through any measures (such as reallocations of return traffic, or other special concessions) which would indicate whipsawing.

Appendix

PART 43—[AMENDED]

Part 43 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 43 continues to read:

Authority: Sec. 4, 46 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

§ 43.53 [Amended]

2. Section 43.53 is amended by removing the words "other than transiting" from paragraph (a).

[FR Doc. 86–2595 Filed 2–6–86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 43

[CC Docket No. 79–262]

Update and Simplification of the Required Traffic Data Reports Filed by International Telecommunications Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule correction.

SUMMARY: This Erratum corrects a typographical error in the Report and Order amending § 43.61 of the Commission's rules governing the reporting of traffic data by international telecommunications carriers. The amendments are intended to update the Commission's Rules and eliminate unnecessary burdens on the carriers.

FOR FURTHER INFORMATION CONTACT: Dan Spiro, Common Carrier Bureau, International Policy Division, Federal Communications Commission, Washington, DC 20554, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

In the matter of Update and Simplification of the Required Traffic Data Reports Filed by International Telecommunications Carriers, CC Docket No. 79–262.

Released: January 28, 1986.

The Report and Order released on May 15, 1985 (FCC 85–219), 50 FR 21607, May 28, 1985 is corrected as follows:

§ 43.61 [Corrected]

1. In the Appendix, 50 FR 21615, § 43.61, item j, the second sentence in paragraph (c) is corrected to read: "This report shall contain the information

required by paragraphs (f)(1)(ii), (2)(ii), 3(ii) and (9) of this section, excluding leased channel service with the continental United States or Alaska."

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 86-2501 Filed 2-6-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-752; FCC 86-49]

Radio Broadcasting; Changes in the AM Technical Rules To Reflect New International Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By Report and Order in MM Docket No. 85-752, the FCC amended its rules to reclassify the AM Local Channels in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as Regional Channels, thus enabling stations assigned to those channels in those locations (which were reclassified as III stations), to apply for higher power; eliminated the distinctions between Class III-A and III-B AM stations; and permitted the 100-km field strength value under Figure 1A of Section 190 of its Rules to be used for shorter distances. Changed conditions warrant the adopted rules revisions. They will enhance opportunities to render radio service to the public.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, FCC Headquarters, Washington, D.C. 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

AM station, class III, AM station, class IV, AM station, technical standards.

Second Report and Order (Proceeding Terminated)

In the matter of changes in the AM Technical Rules, to Reflect New International Agreements; MM Docket No. 84-752.

Adopted: January 16, 1986.
Released: January 28, 1986.

By the Commission.

1. In the *Further Notice of Proposed Rule Making* in this proceeding, 50 FR 30968, published July 31, 1985, the Commission invited comment on additional changes in the AM technical rules to conform the rules to the new AM agreements that had been or were being negotiated. These proposals were in addition to those which has been adopted in an earlier *Report and Order* in this proceeding, 50 FR 18818, published May 2, 1985.

2. The Commission advanced five specific proposals: (1) To reclassify Class IV AM stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as Class III stations and increase their power limit to 50 kW; (2) to eliminate the distinctions between Class III-A and III-B AM stations; (3) to add a cross-reference table between the domestic and international station classifications; (4) to establish a procedure for calculating skywave field strength values over paths shorter than 100 km; and (5) to permit synchronous transmitter systems. Most comments fully supported these proposals.[1] Each issue will be addressed separately.

3. *Channel and Station Reclassification.* Ordinarily, Class III stations are not permitted to use power in excess of 5 kW. However, in the earlier *Report and Order* in this proceeding, the Commission amended the rules to raise the power ceiling for Class III stations operating in Alaska, Hawaii, Puerto Rico and the Virgin Islands. This step was taken to alleviate the problem these stations faced as a result of interference from neighboring countries or the need to provide service into remote underserved areas. The Class IV stations in these locations face similar problems from incoming interference and have similar needs, but they are limited to only 1 kW power. To help them overcome these difficulties, the Commission proposed reclassifying the six Local AM Channels (i.e., 1230, 1240, 1340, 1400, 1450 and 1490 kHz) as Regional Channels in these locations and the stations on them as Class III stations. By virtue of such a reclassification, these stations no longer would be subject to the 1 kW power limit for Class IV stations but would be subject to the 50 kW limit that applies to Class III stations in these locations. This proposal was strongly supported as a means of achieving the identified goals.

4. In evaluating the feasibility of the proposal we have to consider its effect on the use of these channels in the conterminous 48 states. There, the effective use of these channels has involved assigning stations as closely as daytime interference standards permit, using a maximum power of 1 kW. Nighttime protection for these stations is not calculated. Rather, it is a function of the pattern of assignments based on daytime protection and the 1 kW power permitted such stations at night. While the use of greater power would present a problem in the conterminous 48 states, the same does not hold true in these outlying areas. Typically, there is a great distance between operations on the same channel, and the power of these stations could be increased substantially without causing additional co-channel interference to existing stations. Under these circumstances, we believe it is appropriate to reclassify these stations and the channels on which they operate.[2] This will permit the use of higher power subject to the interference limitations set forth below.[3]

5. It is necessary to adopt standards to prevent these stations from causing interference to foreign stations and to the other domestic stations on the channel, both Class III and Class IV. To do this, in addition to complying with international agreements, the reclassified stations will be required to protect Class IV stations in the conterminous United States by application of the RSS procedure and the 50% exclusion rule contained in § 73.182(o) of the Rules. That section prescribes the methods for determining the incremental effect of the nighttime skywave radiations of an AM station on other co-channel stations. The same protection standards also will be applied between stations in the outlying areas.

6. ABES questioned the appropriateness of applying the RSS procedure and the 50% exclusion rule to the protection of Class IV stations in the conterminous 48 states. This, it said, could involve complications because of the large number of stations to be considered. Although these calculations may be slightly more complicated to perform, this would not be expected to impose a significant impact. Even more important, the use of this protection method balances the need for additional power by these stations with the need of

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[1] The parties who filed comments are: Alabama Native American Broadcasting Company, Association for Broadcast Engineering Standards, Inc. (ABES), Association of Federal Communications Consulting Engineers (AFCCE), duTreil-Rackley Consulting Engineers, KOB-AM, Inc., Jefferson-Pilot Communications Company, Laughlin Roughrider Broadcasting, Inc., National Association of Broadcasters (NAB), National Radio Broadcasters Association (NRBA), Edward A. Schober, Consulting Engineer, and Sherman & Beverage Associates, Inc.

[2] In reclassifying these stations as Class III, it is not necessary or appropriate to require them to meet the more rigorous efficiency standards imposed on such stations. Accordingly, the current (Class IV) efficiency requirements will continue to apply to existing and future stations on these frequencies.

[3] Implementation of higher power must await final disposition of NARBA and the implementation of a new AM agreement with Mexico.

mainland stations for protection of their existing service. If interference were allowed to occur to the large numbers of class IV stations in the contiguous 48 states, the adverse impact on the public would be very great. For these reasons, we are not following ABES's suggestion.

7. The reclassified stations, as well as future Class III stations on the reclassified channels, will be afforded the same protection as other Class III stations no matter where located, except that existing and future Class IV co-channel stations in the conterminous 48 states will be permitted to treat all the stations on the reclassified channels during nighttime hours as if they were Class IV stations, and accordingly need not provide contour protection to them. It is recognized that, over time, this could result in some increase of the nighttime limits of stations on the reclassified channels. Such increase is not expected to be significant, however, the view of the distance of the affected stations from the conterminous 48 states.

8. *Distinctions between Class III–A and III–B Stations.* Class III stations are divided into two categories: Class III–A and Class III–B. In the conterminous 48 states Class III–A stations operate with a power from 1 kW to 5 kW, and at night are normally protected to their 2.5 mV/m contour. Class III–B stations operate with a power of 0.5 kW to 5 kW daytime and 0.5 kW at night. Normally, they are protected at night to their 4 mV/m contour. In light of developments over the years, these distinctions no longer seem necessary. Their deletion was fully supported by most of the comments. To the extent that new stations could be proposed or existing stations could be expanded, the new rules should not impose an artifical restraint. Likewise, these stations should be afforded the maximum feasible interference protection. Accordingly, to facilitate the most efficient use of this spectrum, we will eliminate the previous subclassifications and will reclassify all Class III–A and III–B stations as Class III.

9. One of the comments suggested that we lower the minimum power level for Class III stations to 0.25 kW. Several parties suggested that the permissible power be increased to 50 kW throughout the U.S., not just in Alaska, Hawaii, Puerto Rico and the Virgin Islands. At this point we do not have a sufficient record on which to base such a change in the rules.

10. All Class III stations will have a permissible power range extending from 0.5 kW to 5 kW daytime as well as nighttime. During the daytime, all Class III stations will continue to be normally protected to their 0.5 mV/m groundwave contour. During nighttime hours, except as otherwise noted later in this paragraph, all Class III stations will be protected to their 2.5 mV/m groundwave contour or such higher limit as is imposed by prevailing interference. Until now, only Class III–A stations enjoyed this level of nighttime protection but it is appropriate to afford such protection to Class III–B stations as well. Doing so will better protect existing service and make more efficient use of the spectrum involved. We think it administratively desirable that applicants for new stations or changed facilities who tender acceptable applications before the effective date of the rule changes adopted in this *Report and Order* should not be required to provide the greater level of nighttime protection that the rule changes will accord to former Class III–B stations. A new Note 2 to § 73.182(a)(3) so provides.

11. *Cross-referencing Domestic and International Classifications.* As we observed in the *Further Notice*, a new system of station classifications has come into international use. This system classifies stations as Class A (equivalent to a clear channel station) Class B (equivalent to a Class II or Class III station) and Class C (equivalent to a Class IV station). Unlike the domestic system of classifications, the international system does not classify frequencies. In recognizing these international developments, the Commission did not propose reclassifying all U.S. stations, as such an approach seemed infeasible in view of the many categories of U.S. stations. Instead, we proposed adopting a table that provides a convenient cross-reference between the two systems. Only one party questioned the desirability of a cross-reference table, expressing a concern that it might prove confusing. We do not think that such confusion will arise. Rather, we believe that this table can prove helpful in view of the continuing need to relate the current system of domestic classifications to that used under international agreements. Accordingly, the cross-reference table will be adopted as a note in the rules.

12. *Skywave Calculations at less than 100 km.* Figure 1a, § 73.190 graphically depicts the field strengths of skywave signals at distances greater than 100 km from the transmitter for purposes of calculating skywave service or interference. Occasionally, it is necessary to perform interference calculations for locations less than 100 km from the transmitter. Although, as ABES notes, specific data are not available for those shorter paths, experience indicates that their values may be expected to parallel the values shown on Figure 1a at 100 km. Most of the other comments supported such a proposal. Under the circumstances, it is appropriate to utilize this method to remedy the gap in Figure 1a by directing that the value at 100 km be used in calculations for shorter distances, and we so amend the rules.

13. *Synchronous Transmitters.* The comments generally favored the concept of authorizing AM stations to use synchronous transmitters that, in addition to the main transmitter, could simultaneously broadcast the same programs on the same frequency. Some of these comments offered engineering information on the questions posed by such operation, but this information falls far short of that needed to establish specific technical rules. Although we continue to believe there is merit to such operatons, we agree with parties who recommend further consideration and development of both allocations aspects and engineering standards before adopting generally applicable rules. We would welcome proposals for experimental operations of synchronous transmitters in order to develop information to assist us in developing rules that will allow these operations to render effective service while avoiding interference problems. An application for one such operation at East Las Vegas, Nevada is pending. Continuing studies of synchrnous operations are being performed as part of an omnibus review by the Commission's staff of the AM rules, on which a report to the Commission is expected to be submitted early in 1986. We expect, when it is appropriate, to inaugurate further rule making proceedings on synchronous transmitters, and will afford interested persons an opportunity for further comment.

Regulatory Flexibility Final Analysis

I. Reason for Action.

Intervening changes in international agreements necessitate corresponding changes in the rules governing AM radio allocations in the United States.

II. Objective

To conform pertinent rules with changed international agreements.

III. Legal Basis

Section 303 of the Communications Act of 1934, as amended, empowers the Commission to foster the more efficient use of radio in the public interest

IV. Description, Potential Impact and Number of Small Entities Affected

The changes in the rules can be expected to aid affected small entities by allowing the use of higher power and of an improved method for making technical calculations.

V. Recording, Record Keeping and Other Compliance Requirements

No new requirements would be added by the proposed action.

VI. Any Significant Alternative Minimizing Impact on Small Entities Consistent With Stated Objectives

No adverse impact on small entities is expected.

Paperwork Reduction

The rule change adopted here has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and, except for the additional applications expected to be received, this rule change will not increase or decrease burden hours imposed on the public.

13. Accordingly, pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that effective March 6, 1986, Part 73 of the Commissions Rules is amended as set forth in the Appendix.

14. It is further ordered, that all Class IV stations in Alaska, Puerto Rico and the U.S. Virgin Islands and all Class III–A and Class III–B stations irrespective of location are reclassified as Class III stations.

15. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—[AMENDED]

Title 47, Part 73 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 73 continues to read:

Authority: 47 U.S.C. 154 and 303.

1a. 47 CFR 73.21 is amended by revising the introductory portion of paragraph (b) and subparagraph (b)(1), by removing subparagraphs (b)(1)(i) and (b)(1)(ii), and by adding a new note 3 to paragraph (c), to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

* * * * *

(b) *Regional Channel.* A regional channel is one on which several stations may operate with powers set out in subparagraphs (1) and (2) of this paragraph. The service area of a station operating on a regional channel may be limited to a given field strength contour as a result of interference.

(1) *Class III station.* A Class III station operates on a regional channel and is designed to render service primarily to a principal center of population and the rural area contiguous thereto. Except as provided in paragraph (b)(2) of this section, a Class III station operates with a power not less than 0.5 kW and not more than 5 kW.

* * * * *

Note 3.—The following table indicates the international classes of AM broadcasting stations with which the domestic classes of stations set out in the previous paragraphs of this section correspond:

INTERNATIONAL AND DOMESTIC CLASSIFICATIONS OF STATIONS AND CHANNELS

International classes of AM stations	Corresponding U.S. classes of AM stations	Classes of Channels available in U.S. for each class of station
Class A	I–A	Clear channels.
	I–B	Do.
	I–N	Do.
Class B	II	Do.
	II–A	Do.
	II–B	Do.
	II–C	Do.
	II–D	Do.
	II–S	Do.
	III	Regional channels.
Class C	IV	Local channels.

* * * * *

2. 47 CFR 73.26 is revised in its entirety to read as follows:

§ 73.26 Regional channels; Class III Stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class III stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590 and 1600 kHz.

(b) Additionally, in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450, and 1490 kHz are designated as Regional channels, and are assigned for use by Class III stations. Stations formerly licensed to these channels in those locations as Class IV stations are redesignated as Class III stations.

3. 47 CFR 73.27 is revised to read as follows:

§ 73.27 Local channels; Class IV Stations.

Within the conterminous 48 states, the following frequencies are designated as local channels, and are assigned for use there by Class IV stations: 1230, 1240, 1340, 1400, 1450 and 1490 kHz.

4. 47 CFR 73.182 is amended by revising paragraph (a)(3), removing Note 1, revising the present Note 2 and redesignating it as Note 1, and adding a new Note 2, as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) Class III stations operate on regional channels and normally render primary service to the larger cities and the rural area contiguous thereto. They operate with powers not less than 0.5 kW and not more than 5 kW, and are normally protected to the 2500 uV/m groundwave contour nighttime and the 500 uV/m groundwaver contour daytime; provided, however, that Class IV stations in the 48 conterminous United States may, during nighttime hours, treat all stations assigned in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz as if they were Class IV stations.

Note 1.—Class III stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW. Stations in the above-named places that are reclassified from Class IV to Class III stations under § 73.26(b) shall not be authorized to increase power to levels that, under the RSS procedure and the 50% exclusion rule in § 73.182(o), would increase the nighttime interference-free limit of cochannel Class IV stations in the conterminous United States.

Note 2.—Stations that were classified as Class III–B, before the distinctions between Class III–A and Class III–B stations were removed, shall—insofar as AM applications filed before March 10, 1986 are concerned—remain normally protected during nighttime hours to their 4000 uV/m contour.

* * * * *

5. 47 CFR 73.182(r) is amended by adding a note as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(r) * * *

Note.— For Class III stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, 241 uV/m shall be used.

* * * * *

6. 47 CFR 73.182 is amended by revising the table in paragraph (v) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(v) * * *

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference [1]		Permissible interfering signal on same channel [2]	
			Day [3]	Night	Day	Night [4]
I-A	Clear	50 kW	SC 100 μV/m. AC 500 μV/m.	SC 500 μV/m(50% skywave).[7] AC 500 μ[5].	5 μV/m	25 μV/m.[7]
I-B	do	10 kW to 50 kW	SC 100 μV/m. AC 500 μV/m.	SC 500 μV/m 50% skywave. AC 500 μV/m[5].	5 μV/m	25 μV/m.
I-N	do	50 kW	SC 100 μV/m. AC 500 μV/m.	SC 100 μV/m 50% skywave. AC 500 μV/m.	5 μV/m	5 μV/m.
II-A	do	0.25 kW to 50 kW (daytime). 10 kW to 50 kW (nighttime).	500 μV/m	500 μV/m [5]	25 μV/m	25 μV/m.
II-B	do	0.25 kW to 50 kW	500 μV/m	2,500 μV/m [5, 8]	do	125 μV/m.
II-C	do	0.25 kW to 1 kW	500 μV/m	10,000 μV/m [9]	do	500 μV/m.
II-D	do	0.25 kW to 50 kW (daytime)	500 μV/m	Not prescribed	do	Not prescribed.
II-S	do	0.25 kW to 50 kW (daytime) less than 0.25 (nighttime).	500 μV/m	do	do	Do.
III	Regional	0.5 kW to 5 kW	500 μV/m	2,500 μV/m [5, 9]	do	125 μV/m.
IV	Local	0.25 to 1 kW	500 μV/m	Not prescribed [6]	do	Not prescribed.

[1] When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.

[2] For adjacent channel, see paragraph (w) of this section.

[3] Groundwave.

[4] Skywave field strength for 10 percent of more of the time.

[5] These values are with respect to interference from all stations except Class I–B, which stations may cause interference to a field strength contour of higher value. However, it is recommended that Class II stations be so located that the interference received from Class I–B stations will not exceed these values. If the Class II stations are limited by Class I–B stations to higher values, then such values shall be the established standard with respect to protection from all other stations.

[6] See paragraph (a)(4) of this section and Note 1 to paragraph (a)(3).

[7] Class I–A stations on channels reserved for the exclusive use of one station during nighttime hours are protected from co-channel interference on that basis.

[8] Applies only to nighttime operations of Class II–C stations coming within § 73.21(a)(iii), and to the operation of limited-time Class II–D stations during nighttime hours other than those during which they were authorized to operate as of June 1, 1960.

[9] During nighttime hours, Class IV stations in the conterminous 48 states may treat all Class III stations assigned to 1230, 1240, 1340, 1400, 1450 and 1490 kHz in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as if they were Class IV stations.

Note.—SC=Same channel. AC=Adjacent channel.

7. 47 CFR 73.189 is amended by revising subparagraphs (b)(2)(i) and (ii) to read as follows:

§73.189 Minimum Antenna Heights or Field Strength Requirments.

* * * * *

(b)

(2) * * *

(i) Class IV stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class IV and were redesignated as Class III pursuant to Section 73.26(b), 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class IV station on a local channel only. Curve A shall apply to any Class IV stations in the 48 conterminous states that are assigned to Regional channels.)

(ii) Class I–N and Class II stations, and Class III stations other than those covered in Section 73.189(b)(2)(i), a minimum effective field strength of 282 mV/m for 1 kW.

* * * * *

9. 47 CFR 73.190 is amended by adding a new paragraph (b)(3), reading as follows:

§73.190 Engineering Charts and Related Formulas

* * * * *

(b) * * *

(3) The field strength value in Figure 1a at 100 km also is to be used for distances less than 100 km. However, the actual great-circle distance is to be used in determining angle of departure.

* * * * *

[FR Doc. 86–2265 Filed 2–6–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50951–5182]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fisheries in the Hinchinbrook District, in the portion of the Eastern District north of 59°20′ N. latitude and west of 146°15′ W. longitude, and in the portion of the Western District north of 59°20′ N. latitude of Registration Area E (Prince William Sound), must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Hinchinbrook District and the above-defined parts of the Eastern and Western Districts. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Standard Time (AST), February 4, 1986. Public comments on this notice of closure are invited until February 19, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 761.26(d) establishes three districts within Registration Area E to independently manage individual Tanner crab stocks. The optimum yield for the entire Prince William Sound area is 1.5 to 3.5 million pounds. The 1986 fishing season in these districts began on January 5, 1986 (50 FR 47549, November 19, 1985). Reasons for these closures follow:

In the Hinchinbrook District, in the portion of the Eastern District north of 59°20′ N. latitude and west of 146°15′ W. longitude, and in the portion of the Western District north of 59°20′ N. latitude of Prince William Sound, approximately 240,000 pounds of Tanner crabs have been delivered by 11 vessels through January 23. The reported catch per unit of effort (CPUE) has declined from a maximum of 56 crabs per pot on January 6, 7, and 8 to a maximum of 20 crabs per pot on January 15, 16, and 17. Based on this rapidly declining CPUE early in the fishery, the Regional Director has determined that the conditions of Tanner crab stocks in these portions of Prince William Sound are substantially different from the conditions anticipated on November 1, 1985, the beginning of the fishing year, and this difference reasonably supports the need to protect those Tanner crab stocks by closing the above-described portions of the Prince William Sound area. These sections are therefore closed to all fishing for Tanner crab from noon, AST, February 4, 1986, until noon, Alaska Daylight Time, May 31, 1986, at which time the closure prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above-described portions of Prince William Sound will be subject to damage by overfishing unless this closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this order is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671, and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-2755 Filed 2-4-86; 4:44 pm]

BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 50951-5182]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the South Peninsula District of Registration Area J must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the South Peninsula District. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective at noon, Alaska Standard Time (AST), February 5, 1986. Public comments on this notice of closure are invited until February 19, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the South Peninsula District. The 1986 fishing season in this District began on January 15, 1986 (50 FR 47549, November 19, 1985). Reasons for this closure follow:

As of January 28, 1986, approximately 73 vessels have landed 2.2 million pounds of Tanner crabs in the South Peninsula District. The catch per unit of effort (CPUE) in most of the district declined from 54 crabs per pot on January 18, 1986, to 25 crabs per pot on January 28, 1986. CPUE in one portion of the district has been reported to be as low as 9 crabs per pot. This decline in CPUE indicates a rapid depletion of the available Tanner crab stock and was unanticipated based on the 1985 survey results that indicated improved stock conditions.

Based on the rapidly declining CPUE so early in the fishery, the Regional Director has determined that the condition of the Tanner crab stock in the South Peninsula District is substantially different from the condition anticipated on November 1, 1985, the beginning of the fishing year, and that this difference reasonably supports the need to protect these Tanner crab stocks. The South Peninsula District, as defined in § 671.26(f)(1)(ii), is closed by this notice until noon, Alaska Daylight Time, May 15, 1986, at which time the closure of this district prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register** either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the South Peninsula District will be subject to damage by overfishing unless this

closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this order is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-2756 Filed 2-4-86; 4:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 99

[Docket No. 24903; Notice No. 86-1]

Transponder Requirements; Operations In or Out of U.S. Through a Coastal ADIZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This proposal would require aircraft to have an operating transponder when operating into, within, or out of the United States through a coastal Air Defense Identification Zone (ADIZ). The proposed action would assist in the identification of aircraft in and near the ADIZ and would promote enforcement of laws relating to illegal smuggling activities. Smuggling activity in small aircraft presents air safety problems. This proposal would promote air safety by reducing the incidence of aircraft use in smuggling activity.

DATE: Comments must be received on or before April 10, 1986.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24903, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Burton Chandler, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this advance proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the recommendations. Comments are specifically invited on any regulatory, economic, environmental, and energy aspects of the recommendations. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on ths notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24903." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before proposing any rule. Any proposed rule resulting from the recommendations contained in this notice may reflect comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

The U.S. Customs Service of the Department of the Treasury has requested that the FAA take measures to identify all aircraft entering the United States. A letter dated July 11, 1985, from Deputy to the Assistant Secretary of the Treasury to the FAA Director of Civil Aviation Security summarizes the customs service request. A copy of that letter has been placed in the docket. The request is based on the major increase in illegal drug importation, and on the value to law enforcement officials of early positive identification of aircraft which may be engaged in such activity. Subpart A of Part 99 of the Federal Aviation Regulations (FAR) sets forth security requirements for aircraft operation in an ADIZ but does not set forth any transponder requirements for aircraft operating in an ADIZ. FAR 91.24 requires an air traffic control (ATC) radar transponder for operations above 12,500 feet above mean sea level (MSL), excluding the airspace below 2,500 feet above ground level (AGL), and for operation in a terminal control area (TCA). No other existing rule requires aircraft operations conducted in a coastal ADIZ to have or use an operable transponder. On November 1 the FAA published a rule requiring that aircraft having an operable transponder operate that transponder while airborne in the National Airspace System (50 FR 45599). The FAA is considering proposal of a similar requirement for operation in an ADIZ. Neither the rule nor the proposal would require installation of a transponder, however.

A large portion of the transport of illicit drugs into the United States has for some time been accomplished by aircraft flying into the United States through a coastal or domestic ADIZ. While the FAA does not have jurisdiction over antismuggling and related statutes, it is concerned with the growth of hazards to air commerce in the United States arising in connection with the increasing use of aircraft to escape detection in bringing narcotic drugs, marijuana, and depressant or stimulant drugs into the United States. The means for detection of these aircraft include low altitude radar, pursuit aircraft, and advanced police techniques. Any pilot committed to escaping detection in order to avoid severe penalties may be expected to engage in extremely dangerous flight techniques to avoid pursuit aircraft, including very low flight to avoid ground based radar, landing and taking off from

unprepared landing areas, and operation in weather conditions beyond the capability of the aircraft or pilot. The FAA believes that these flight techniques create a safety hazard for other aircraft in the area and for persons and property on the ground. Thus, while other agencies are responsible for controlling the traffic in narcotic drugs, marijuana, and depressant or stimulant drugs and although the mere carriage of those items under normal conditions is not dangerous, the conduct of pilots engaged in smuggling activity poses a direct threat to air commerce.

Aircraft operating into the United States are subject to an identification process which involves, in part, the correlation of radar-detected targets with required flight plan and position report information. Radar targets of aircraft with an operating transponder are identified more quickly and more positively than radar targets of aircraft without a transponder. A requirement that aircraft entering the United States have an ATC transponder would greatly facilitate the routine identification of individual aircraft, and would permit quicker identification of those operators attempting to avoid detection and identification. The transponder requirement would be limited to coastal ADIZ airspace because the current designation of the Southern border domestic ADIZ is simply a line following the Mexican border of the United States. A simple requirement to have an operating transponder while crossing the border would not serve safety or law enforcement purposes. If a need is determined for mandatory transponder operation prior to crossing the Mexican border, as is proposed for the coastal ADIZ, that requirement would be the subject of future rulemaking.

The Proposal

The FAA is providing advance notice of its proposal for use of a transponder through coastal ADIZ's. This proposal would require aircraft operating into, within or out of the United States through a coastal ADIZ to have an operating transponder. The proposal is recognized as one that would require some operators to purchase new equipment. The FAA, therefore, solicits comments from all interested parties, on all aspects of the proposal. These comments will be given full consideration prior to any future agency action on the proposal.

Economic Evaluation

Agencies of the Federal Government are required by Executive Order 12291 to examine any proposed regulation to ascertain its economic impact and its potential benefits to society in comparison to the potential costs to society. Any regulatory proposal by the FAA must be accompanied by an evaluation quantifying, to the extent possible, the benefits and costs of such proposals. Therefore, it is essential that comments for or against the proposed required transponders for aircraft operating in an ADIZ include statements regarding the economic impacts perceived by the Commenter. As a result, FAA specifically solicits comments from individuals, corporate entities and organizations on the economic benefits and costs of the proposed regulations.

With this in mind, FAA suggests that comments address the following questions:

1. What benefits, other than those noted, would be derived from requiring transponders on aircraft operating in an ADIZ?

2. What incremental costs would be imposed on operators of aircraft through an ADIZ? Estimates of these costs should include consideration of the following:

(a) Component costs—
(1) Transponder units,
(2) Installation.
(b) Operating costs—
(1) Weight/fuel,
(2) Maintenance,
(3) Additional training.
(c) Others.

3. What are the estimated average life spans of transponders?

4. What estimated numbers of aircraft would be affected?

5. Would the proposed rules have a significant economic impact, either beneficial or detrimental, on small business, non-profit organizations, or governmental jurisdictions? If so, what are the types and sizes of the entities affected? Also, what is the nature and magnitude of the economic impact?

6. What, if any, alternatives to the proposed rules are available that would accomplish the same goals?

7. What are the costs and benefits of these alternatives and how do they compare to the costs and benefits of the proposed rule?

Responses to these questions should fully address the nature of the impact and the nature of the groups or types of operations, business or entities that are impacted. Commenters should describe and quantify the specific benefits and costs. They should be supported by factual data, to the extent possible. Otherwise, the reasons why costs are not quantifiable should be explained. Commenters should also provide the rational for their opinions, which might include information pertaining to type of operation and typical aviation practices, or publication practices. The FAA will examine separately the costs imposed on the Federal Government (e.g. equipment, education, training).

The benefit and cost questions outlined above cover broad areas of this ANPRM. The FAA desires comments pertaining to these areas of impact and any other areas that commenters feel may have an impact. The FAA invites particularly interested groups to gather the preferences, ideas, and comments of their group members, through such devices as articles in membership publications and polls of their membership.

The FAA does not have sufficient information to complete an economic evaluation of the proposal at this time. A full regulatory evaluation will be prepared with the assistance of comments received as a result of this advance notice, if necessary, in conjunction with any notice of proposed rulemaking that may be issued on this subject. For the reasons set forth in the preamble, the FAA has determined that the amendment does not involve a major rule under Executive Order 12291 and that this proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). On the basis of information received, the FAA will determine whether, under the criteria of the Regulatory Flexibility Act, this rule if promulgated would have a significant economic impact on a substantial number of small entities.

The authority citation for Part 99 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1502, 1510 and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

List of Subjects in 14 CFR Part 99

Air defense zone, Identification of foreign aircraft.

Issued in Washington, DC, on December 5, 1985.

Daniel F. Creedon,

Acting Director, Air Traffic Operations Service.

[FR Doc. 86–2666 Filed 2–6–86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9172]

Roswil, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Springfield, MO, grocer, among other things, to cease engaging in concerted action that restricts the gathering or reporting of comparative grocery price data. Additionally, respondent would be prohibited from: (1) Requiring price checkers to buy the surveyed items; (2) denying price checkers the same access to Roswil's stores as customers; and (3) coercing any price checker, publisher or broadcaster into discontinuing price reporting. Further, respondent would be required to take several steps to increase the likelihood that price surveys will be resumed in Springfield. According to the proposed order, the company must reimburse the local cable television station up to $1,000 of its costs if it decides to broadcast a comparative grocery price program and notify the public that such program will be aired.

DATE: Comments must be received on or before April 8, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bremer, FTC/B–921, Washington, DC 20580, (202) 724–1668.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

Before Federal Trade Commission

In the matter of Roswil, Inc., a corporation, trading and doing business as Ramey Super Markets.

[Docket No. 9172]

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between Roswil, Inc., a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Roswil, Inc., hereinafter sometimes referred to as "Roswil," is a Missouri corporation, trading and doing business as Ramey Super Markets. Its registered agent is Flavius Freeman, 1–130 Corporate Square, Springfield, Missouri.

2. Roswil has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Roswil admits all the jurisdictional facts set forth in the Commission's compliant in this proceeding.

4. Roswil waives:

a. Any further procedural steps;

b. The requirement that the Federal Trade Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement is for settlement purposes only and does not constitute an admission by Roswil that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Roswil, in which event it will take such action as it may consider appropriate, or without further notice to Roswil issue and serve its decision containing the following Order in disposition of the proceeding and make information public in respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Roswil's address as stated in this agreement shall constitute service. Roswil waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

7. A responsible official of Roswil has read the complaint and the Order contemplated hereby on behalf of Roswil. Roswil understands that once the Order has been issued, Roswil will be required to file one or more compliance reports showing that it has fully complied with the Order. Roswil further understands that it will be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the porpose of this Order, the following definitions shall apply:

A. "Roswil" means Roswil, Inc., its divisions and subsidiaries, officers, directors, representatives, agents, employees, successors and assigns.

B. "Price check" or "price checking" means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. "Price checker" means any person engaged in price checking.

D. "Price reporting" or "price report" means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. "Springfield" means the counties of Christian and Greene, Missouri.

F. "Customer" means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or

not that individual actually makes a purchase.

G. "Person" means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. "Geographic area" means: (1) A Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. "Supermarket" means any retail grocery store (SIC 5411) with annual sales of more than one million dollars ($1,000,000.00).

II

It Is Further Ordered That:

A. Roswil shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraphs II.C. and II.D., until September 7, 1989, Roswil shall cease and desist from taking or threatening to take any unilateral action that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Roswil's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Roswil from adopting reasonable, non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Roswil's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Roswil from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Roswil believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Roswil believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Roswil's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Roswil may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Roswil's statement shall exist. In any civil penalty action against Roswil for a violation of subparagraph II.B.2. occurring after notice to the Federal Trade Commission was given by Roswil as provided in this subparagraph, Roswil shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagrpah have been met. In meeting its burden, Roswil may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

D. 1. Nothing in paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting in its stores information that is not available to customers.

2. Nothing in paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting information in its stores, if said company is presently or has been under contract to Roswil to pay such a fee for collecting such information, or if the primary purpose of collecting such information is not to disseminate it to the public.

III

It Is Further Ordered That, upon the resumption of price reporting by TeleCable of Springfield that is similar in quality and coverage to that broadcast by it prior to October 14, 1981, and that includes any Roswil supermarket, and upon receipt by Roswil of written request for payment from TeleCable, Roswil shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars ($250.00) per week. Roswil's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars ($1,000.00) or three (3) years following the date on which this Order becomes final, whichever occurs first. Roswil shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV

It Is Further Ordered That, within seven (7) days following the date on which this Order becomes final, Roswil shall send a letter, a copy of which is attached here as Exhibit A, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Roswil's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Roswil must receive from TeleCable before certain Order provisions become binding upon Roswil.

V

It is Further Ordered That, if at any time during the two years following the date on which this Order becomes final, Roswil is notified in writing by TeleCable of Springfield that price reporting that includes any of Roswil's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Roswil shall post signs no smaller than 30 inches by 40 inches in a front window in each of Roswil's supermarkets in Springfield, stating:

Grocery Price Survey

A price survey comparing prices of selected grocery items at Ramey's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel _____ and is broadcast from _____ to _____.

B. For a period of sixty (60) days following the receipt of such notices, whenever Roswil places food advertisements of one-half page or larger in any printed advertising medium with circulation of 15,000 or more copies in Springfield, Roswil shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Roswil does not place a one-half page or larger food advertisement in such printed advertising medium, Roswil shall place this announcement as a display advertisement in any printed advertising medium with circulation of 15,000 or more copies in Springfield.

VI

It Is Further Ordered That Roswil shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three

years, provide a copy of this Order to each of its officers actively engaged in the operation of its supermarkets in Springfield and to each manager of a Ramey supermarket located in Springfield, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII

It Is Further Ordered That Roswil shall, within sixty (60) days after the date on which this Order becomes final, with the Commission a verified written report, setting forth in detail the manner and form in which Roswil has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

VIII

It Is Further Ordered That Roswil shall, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in it such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation or its retail grocery operations, which may effect compliance obligations arising out of this Order.

Exhibit A

TeleCable of Springfield,
1533 South Enterprise, Springfield, Missouri 65801

Dear Sir or Madam: This is to notify you that Roswil, Inc. ("Roswil"), which operates Ramey Super Markets in Springfield, Missouri, has entered into a consent order with the Federal Trade Commission in which it has agreed that it will not interfere with efforts by independent parties such as Tele-Cable of Springfield to engage in price reporting or price checking in Roswil's grocery stores in Springfield. Roswil has agreed that it will not require price checkers to purchase the items being price checked, will not deny price checkers the same access to its supermakets as is provided to customers, and will not attempt to coerce any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting. The terms of and limitations on Roswil's agreement are set forth in a consent order issued by the Federal Trade Commission, a copy of which is enclosed herewith.

If TeleCable of Springfield institutes a price reporting program similar or superior in quality and coverage to the one broadcast by TeleCable in 1981, and if the program includes any of Roswil's grocery stores in Springfield, Missouri, Roswil will reimburse TeleCable for its actual costs of obtaining price reports, up to the amount of $250 per week, and up to $1,000 in total. Roswil will also place notices in its Springfield grocery stores and in its weekly advertisements, informing consumers of TeleCable's price surveys. The precise terms of Roswil's obligations to place such notices, and to reimburse TeleCable for certain of its costs, are set forth in the enclosed consent order.

In order to receive any funds to which you may be entitled and to effect the placement of notices described above, please notify Roswil in writing, c/o President, Ramey Super Markets, 3259 East Sunshine, Springfield, Missouri 65804, stating when the program began or is scheduled to begin, the time and channel on which the survey will be broadcast, and TeleCable's costs, if any, of obtaining the survey.

Very truly yours,

President,

Ramey Super Markets.

Enclosure.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Roswil, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

A complaint was issued against Roswil, Inc., ("Roswil") and two other Springfield, Missouri, grocery retailers on December 16, 1983, charging them with a conspiracy to prevent an independent price checking firm from collecting comparative grocery price information from their stores for broadcast to the public over the local cable television station. A fourth retailer, Dillon Companies, Inc., had previously signed a consent agreement, which became final on October 13, 1983. The complaint against Roswil charges that, by agreeing with others to prevent the collection and public dissemination of comparative grocery price information, Roswil has engaged in conduct that constitutes a restraint on price competition and a group boycott, and that Roswil's conduct constituted an unfair method of competition or an unfair act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act. The complaint alleges that this conduct had the following anticompetitive effects (1) price competition among Springfield grocery retailers has been suppressed; and (2) consumers in Springfield have been deprived of price information that can be used in the selection of a grocery store.

The proposed order provides that Roswil must: (1) refrain from engaging in concerted action to impede the collection or dissemination of comparative grocery price information; (2) refrain until September 7, 1989, from taking three specific types of actions to impede the collection or dissemination of comparative grocery price information; (3) reimburse the Springfield, Missouri, cable television station up to $1,000 for the broadcast of a comparative grocery price program, if the cable station elects to broadcast such a program; (4) if the cable station elects to broadcast such a program, to post signs and place advertisements for sixty (60) days notifying the public that such a program is being broadcast; (5) notify certain of its officers and employees of the terms of the order; (6) file periodic verified written compliance reports setting forth its compliance with the provisions of the order; and (7) provide the Federal Trade Commission at least 30 days notice prior to effecting changes in the corporation that may affect its compliance obligations arising from the order.

The proposed order, by requiring Roswil to refrain from concerted and individual action to impede the collection or dissemination of comparative grocery price information, should ameliorate the anticompetitive effects resulting from the concerted action. The proposed order is intended to permit the marketplace to determine whether a comparative price survey is broadcast in Springfield, and to ensure that the development of new forms of consumer price information is not inhibited.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-2802 Filed 2-6-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Importation of Motor Vehicles and Boats by Employees of Public International Organizations

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Currently, the members of the Secretariat of a public international organization are exempted from compliance with federal emission standards, motor vehicle safety standards, and boat safety standards when importing a motor vehicle, boat, or related piece of equipment into the U.S. More than 15,000 staff personnel of such organizations are eligible to make nonconforming importations and the State Department has determined that the number of exemptions has extended well beyond the intended limits of the program.

Along with the problem associated with the number of people making such nonconforming importations, continuation of the exemption program would allow for the continued unjustified introduction into the U.S. of motor vehicles and boats which injure the public health and pose an unnecessary risk to the public safety.

The State Department has informed Customs that the exemption is not required by international law and is no longer warranted. Therefore, this document proposes to remove the exemption available to public international organization employees. In the rare instance when some international agreement might require such a privilege being granted, or to accommodate special circumstances, the proposal allows the State Department to designate certain individuals who would be granted the privilege of making nonconforming importations.

The document invites written comments on the proposal for consideration before final regulations are prepared.

DATES: Comments must be received on or before April 8, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: William Burns, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8651).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in the discharge of its duties, is often called upon to help enforce some 400 statutory and regulatory requirements on behalf of approximately 40 other Federal agencies. Three such instances are the cooperative efforts of Customs and the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Coast Guard, respectively, in enforcing regulations pertaining to the importation of motor vehicles, motor vehicle engines, boats, and related equipment. The specific regulations involved are § 12.73, Customs Regulations (19 CFR 12.73), concerning emission standards for imported motor vehicles and engines, § 12.80, Customs Regulations (19 CFR 12.80), concerning safety standards for imported motor vehicles, and § 12.85, Customs Regulations (19 CFR 12.85), concerning safety standards for imported boats.

In all three of these regulations, there are examples of certain types of importations which will be exempted from compliance with the applicable emission or safety standard. Common to all three is the exemption available to members of the Secretariat of a public international organization. The exemptions appear at §§ 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5), Customs Regulations (19 CFR 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5)). More precisely, the exemption is available to a member of the Secretariat of a public international organization, so designated pursuant to the International Organizations Immunities Act (22 U.S.C. 288), on assignment in the U.S. A list of these organizations is included in § 148.87, Customs Regulations (19 CFR 148.87).

The International Organizations Immunities Act (the IOIA) was passed in 1945 to bring some standardization to the conduct of affairs with public international organizations. The U.S. had been dealing directly with other governments for a very long time, and diplomatic law was fairly well established. However, the U.S. was dealing with other countries through the medium of public international organizations with increasing frequency at this time. The IOIA was the U.S. response to the need for formal methods of dealing with public international organizations. The law was passed with the thought in mind that public international organizations, and the employees thereof, should be granted privileges and immunities similar to, but less extensive, than the privileges and immunities granted to foreign governments and diplomats. This reflected the fact that public international organizations were not foreign governments but were public organizations often carrying on work or research of a governmental nature.

The use of the IOIA in the three Customs Regulations mentioned above has expanded beyond the concept of the law as passed in 1945. It is not a necessary practice to grant employees of public international organizations the right to import nonconforming motor vehicles or boats for personal use. The IOIA was intended to extend privileges and immunities only to official acts of the organization and its empolyees.

The State Department has advised Customs that the current exemption program is not required by any international law and is no longer warranted. Currently, over 15,000 staff employees of public international organizations can import nonconforming motor vehicles, motor vehicle engines, boats, and related pieces of equipment for personal use. The State Department's Office of Foreign Missions has informed Customs that this number of exemptions has extended well beyond the intended limits of the program. Also contributing to the proposal to eliminate the exemption program is the unnecessary harm inflicted on the U.S. environment by these nonconforming imports and the unnecessary risk they pose to the public safety. Accordingly, §§ 12.73, 12.80, and 12.85 would be amended by removing the exemption available to employees of public international organizations.

To accommodate the rare instance in which a binding international commitment requires that such an exemption be granted, or special circumstances exist, it is proposed to add language to §§ 12.73, 12.80, and 12.85, permitting the State Department to designate individuals who are not foreign government diplomatic personnel, but who are otherwise entitled to import nonconforming motor vehicles, motor vehicle engines, boats or related equipment.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Air pollution control, Marine safety, Motor vehicle pollution, Motor vehicle safety, Motor Vehicles.

Proposed Amendments

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. Section 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601; § 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310.

2. It is proposed to revise § 12.73(b)(5)(iv) to read as follows:

§ 12.73 Federal motor vehicle air pollution control

* * * * *

(b) * * *

(5) * * *

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law, and that such vehicle or engine will not be sold in the U.S.; or

* * * * *

3. It is proposed to revise § 12.80(b)(1)(vi) to read as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * *

(b) * * *

(1) * * *

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or a member of the personnel of a foreign government on assignment in the U.S., or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

* * * * *

4. It is proposed to revise § 12.85(c)(5) to read as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * *

(c) * * *

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S., is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

* * * * *

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 22, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-2742 Filed 2-6-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

Job Training Partnership Act; Reports Required; Technical Amendment

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is publishing a proposed technical amendment to the "Reports Required" section of the Job Training Partnership Act regulations. The purpose is to conform the regulations to proposed new reporting requirements which provide for the submission of reports semiannually.

DATE: Written comments are invited from the public. Comments must be submitted on or before March 10, 1986.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213. Attention: Robert N. Colombo.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training programs Employment and Training Administration, U.S. Department of Labor, Room 6402, 601 D Street NW. Washington, DC 20213. Telephone 202-376-6093.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing changes to the reporting requirements for JTPA programs. This technical amendment is being proposed to conform the regulations at 20 CFR 629.36 to the proposed reporting requirements which include the semiannual submission of reports. (See Vol. 51, No. 9 of the **Federal Register**, pp. 1569-76, 1/14/86). The proposal to place Title II-A and Title III Statewide enrollment and expenditure data on a semiannual reporting basis is based on the Department's concern that many of the budget pressures now faced were not anticipated when the annual submission was authorized starting with PY 1984. The data available from an annual report is too out-of-date to respond to Congressional inquiries during the budget process and provide a sound basis for the Department's budget recommendations. Semiannual reporting and the addition of the proposed expenditure detail will also give the Department information on what has been found to be widely differing

expenditure rates of programs under the Act.

Regulatory Impact

This proposed rule is a technical amendment conforming to changes in JTPA reporting requirements. As such, it does not have the financial or other impact to make it a major rule, and therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The reports under the rule are to be made by States, which are not small entities as defined under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule changes an information collection requirement previously approved by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.* The applicable reporting requirement for grantees would no longer be limited to an annual period. As would be permitted by the proposed rule, the Department of Labor is requesting OMB's approval pursuant to the Paperwork Reduction Act, for the report to be made semiannually.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.250, "Job Training Partnership Act (JTPA)".

List of Subjects in 20 CFR Part 629

Grant programs, Labor, Manpower training programs.

Proposed Rule

Accordingly, Part 629 of Chapter V of Title 20, Code of Federal Regulations is proposed to be amended as follows:

PART 629—[AMENDED]

1. The authority citation for Part 629 continues to read as follows:

Authority: Job Training Partnership Act, Sec. 169, Pub. L. 97-300, 96 Stat. 1322 (29 U.S.C. 1501 et seq.).

2. Section 629.36 is revised to read as follows:

§ 629.36 Reports required.

The Governor shall report to the Secretary pursuant to instructions issued by the Secretary. Reports shall be required by the Secretary no more frequently than semiannually. Reports shall be submitted to the Secretary within 45 calendar days after the end of the report period. (Section 165(a)(2))

Signed at Washington, DC, this 3rd day of February 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

[FR Doc. 86-2827 Filed 2-6-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 82N-0163]

Biological Products; Blood and Blood Derivatives; Implementation of Efficacy Review

Correction

In FR Doc. 85-30007 beginning on page 52602 in the issue of Tuesday, December 24, 1985, make the following corrections:

1. On page 52720, third column, in § 606.151 (b), third line, "of" should read "or".

2. On page 52721, first column, in § 610.53 (a), in the table, second column, third line from the bottom, "21 days" should read "35 days".

3. On page 52722, second column, in § 640.65 (b)(2)(i), first line, "Expect" should read "Except".

4. On page 52722, third column, in § 640.84(b), second line, "NO" should read "DO". Also, in § 640.84 (c), second line, "of" should read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Quazepam and Midazolam Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place the benzodiazepine drugs, quazepam and midazolam, into Schedule IV of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). The Administrator of the Drug Enforcement Administration has received recommendations from the Department of Health and Human Services that quazepam and midazolam be controlled in Schedule IV.

DATE: Comments must be submitted on or before March 10, 1986.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control; Narcotics, Prescription drugs.

The Administrator of the Drug Enforcement Administration received a letter dated December 18, 1985 regarding quazepam and another letter dated January 13, 1986 regarding midazolam from the Acting Assistant Secretary for Health, on behalf of the Secretary of the Department of Health and Human Services, recommending that each substance be placed into Schedule IV of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801-966)). Enclosed with each letter from the Acting Assistant Secretary was a scientific and medical evaluation which listed the factors which the Act requires the Secretary to consider, and summarized the matters considered by the Acting Assistant Secretary in recommending the control of quazepam and midazolam under the Controlled Substances Act. In his letters, the Acting Assistant Secretary requested that the Drug Enforcement Administration delay the publication of the proposed rulemaking until notification of final approval by the FDA. The Drug Enforcement Administration has been advised that the NDA approval letters have been forwarded to the sponsors of each of the drugs in question, and that FDA recommends that the rulemaking procedures be initiated.

This proposed rulemaking is published based upon the letters received from the Food and Drug Administration and the Acting Assistant Secretary for Health that the NDA's for quazepam and midazolam have been approved. The final rule in this matter will be issued when the Administrator receives formal notification from the

Assistant Secretary for Health or the Food and Drug Administration that the NDA's for quazepam and midazolam have received final approval from the Food and Drug Administration.

The factors considered by the Secretary for each of the drugs, quazepam and midazolam, were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug (or other substance);

(4) Its history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) What, if any, risk to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

Relying on the scientific and medical evaluations and the recommendations of the Acting Assistant Secretary for Health, received in accordance with section 201(f) of the Act (21 U.S.C. 811(f)), the Administrator of the Drug Enforcement Administration, pursuant to sections 201(a) and 201(b) of the Act, (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, quazepam and midazolam each appear to have a low potential for abuse relative to the drugs or other substances currently listed in Schedule III.

(2) Quazepam and midazolam, upon final approval of each new drug application by the Food and Drug Administration, will each have currently accepted medical uses in treatment in the United States.

(3) Abuse of either quazepam or midazolam may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

PART 1308—[AMENDED]

Therefore, under the authority vested in the Attorney General by section 201(a) of the Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Drug Enforcement administration by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby proposes to amend 21 CFR 1308.14(c) to read as follows:

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811(a).]

2. Section 1308.14(c) would be revised to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(1)	Alprazolam	2882
(2)	Barbital	2145
(3)	Bromazepam	2748
(4)	Camazepam	2749
(5)	Chloral betaine	2460
(6)	Chloral hydrate	2465
(7)	Chlordiazepoxide	2744
(8)	Clobazam	2751
(9)	Clonazepam	2737
(10)	Clorazepate	2768
(11)	Clotiazepam	2752
(12)	Cloxazolam	2753
(13)	Delorazepam	2754
(14)	Diazepam	2765
(15)	Estazolam	2756
(16)	Ethchlorvynol	2540
(17)	Ethinamate	2545
(18)	Ethyl loflazepats	2758
(19)	Fludiazepam	2759
(20)	Flunitrazepam	2763
(21)	Flurazepam	2767
(22)	Halazepam	762
(23)	Haloxazolam	2771
(24)	Ketazolam	2772
(25)	Loprazolam	2773
(26)	Lorazepam	2885
(27)	Lormetazepam	2774
(28)	Mebutamate	2800
(29)	Medazepam	2836
(30)	Meprobamate	2820
(31)	Methohexital	2264
(32)	Methylphenobarbital (mephobarbital)	2250
(33)	Midazolam	2884
(34)	Nimetazepam	2837
(35)	Nitrazepam	2834
(36)	Nordiazepam	2838
(37)	Oxazepam	2835
(38)	Oxazolam	2839
(39)	Paraldehyde	2585
(40)	Petrichloral	2591
(41)	Phenobarbital	2285
(42)	Pinazepam	2883
(43)	Prazepam	2764
(44)	Quazepam	2881
(45)	Temazepam	2925
(46)	Tetrazepam	2886
(47)	Triazolam	2887

* * * * *

Interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event comments, objections, or requests for a hearing received in response to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing (which will not be less than 30 days after the date of the order).

If no objections presenting grounds for a hearing on this proposal are received within the time limitation or if interested parties waive or are deemed to have waived their opportunity for a hearing or to participate in a hearing, the Administrator, after giving consideration to written comments and objections, will issue his final order pursuant to 21 CFR 1308.48 without a hearing.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the control of quazepam or midazolam, as proposed herein, will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). These scheduling actions relate to the proposed initial control of drugs not previously approved for marketing in the United States.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this proposal to place each substance, quazepam and midazolam, into Schedule IV is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291.

Dated: February 3, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-2732 Filed 2-6-86; 8:45 am]

BILLING CODE 4410-09-M

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28 CFR Part 16

[AAG/A Order No. 5-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "Declassification Review System (JUSTICE/OLP-004)." Information in this system relates to official Federal investigations and matters of law enforcement. The exemption is needed

to protect ongoing investigations, material which has been properly classified pursuant to Executive Order 12356, the privacy of third parties, and the identities of confidential sources involved in such investigations.

DATE: Submit any comments by March 10, 1986.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Declassification Review System."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

Pursuant to the authority invested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR 16.73 is amended by adding paragraphs (g) and (h) as set forth below.

Dated: December 18, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR 16.73 by adding paragraphs (g) and (h) as follows:

§ 16.73 Exemption of Office of Legal Policy System—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (g):

(1) Declassification Review System (JUSTICE/OLP–004).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to Executive Order 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effect law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 86–2698 Filed 2–6–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program modifications submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Ohio regulations at 1501:13–3–05, 1501:13–4–04, 1501:13–4–13 and 1501:13–9–04. The amendments allow registered surveyors to prepare and certify maps for permit applications and to design and certify construction of drainage control systems jointly with a registered professional engineer. The amendments also add informational and mapping requirements to permit applications for cultural and historic resources eligible for listing on the National Register of Historic Places.

This notice sets forth the time and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., March 10, 1986 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendments has been scheduled for February 27, 1986. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by February 24, 1986 of. If no person has contacted Ms Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in August 10, 1983 **Federal Register.**

II. Submission of Revisions

By letter dated October 26, 1985, Ohio submitted proposed program amendments consisting of:

(1) Revisions to 1501:13–3–05 (10/18/85) to add cultural and historic resources eligible for listing on the National Register of Historic Places to the definition of "historic lands";

(2) Revisions to 1501:13–4–04 (10/18/85) to allow registered surveyors to prepare the maps necessary for surface coal mining permit applications; to add requirements for permit information and maps showing cultural and historic resources eligible for listing on the National Register of Historic Places, and to redefine prime farmland exemptions to include land that has not been historically used for cropland;

(3) Revisions to 1501:13–9–04 (10/18/85) that allow the design and certification of construction of drainage control systems and sedimentation ponds by either a registered professional engineer or a registered professional engineer and a registered surveyor to the extent joint certification is required or permitted by the regulatory authority; and

(4) Revisions to 1501:13–4–13 (10/21/85) to allow registered surveyors to prepare supplementary maps, cross-sections and plans necessary for underground coal mining permit applications; to add requirements for permit information and maps showing cultural and historic resources eligible for listing on the National Register of Historic Places, and to allow the preparation of detailed design plans and maps by registered professional engineers only.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 2291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1986.

Gary Bennethum,

Acting Deputy Director, Operations and Technical Services Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–2734 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Reopening and Extension of Public Comment Period on Proposed Modifications to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening and extending the public comment period on proposed amendments to the Pennsylvania Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977

(SMCRA) submitted to OSMRE by Pennsylvania. The amendments are intended to satisfy two conditions of the Secretary of the Interior's approval of the Pennsylvania program. The two conditions, listed at 30 CFR 938.11(d) and 938.11(k), pertain to prime farmland requirements for proposed mining operations in the anthracite region and to bond release procedures. The State also submitted proposed changes to its permitting and blasting regulations.

These amendments were initially submitted by the State on November 2, 1984. OSMRE published a notice in the **Federal Register** on January 4, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendments (50 FR 486).

Following a review of the Pennsylvania amendments, OSMRE notified the State on April 24, 1985, of its concerns about the amendments. On September 5, 1985, the State responded to the issues set forth in OSMRE's letter.

Accordingly, OSMRE is reopening and extending the public comment period on Pennsylvania's amendment of November 2, 1984, as clarified by the State's letter of September 5, 1985. This action is being taken to provide the public an opportunity to consider the adequacy of the proposed amendments in light of the State's clarification.

DATE: Written comments from members of the public not received by 4:30 p.m. on February 24, 1986, will not necessarily be considered in the Secretary's decision on whether the proposed amendments satisfy the criteria for approval.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Copies of the Pennsylvania program, the proposed modifications to the program, records of meetings and all written comments received in response to this notice will be available for public review at the OSMRE Field Office above and the OSMRE Headquarters office listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Additionally, on April 20, 1983, the United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association v. Watt*, Civil No. 82–1129, remanded to the Secretary for correction the provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment was required to revise the State provision. In the **Federal Register** (48 FR 27102) dated June 13, 1983, OSMRE announced its intention to impose new condition (k) on the approval of the Pennsylvania program to comply with the district court decision. The State responded to OSMRE's June 7, 1983, letter on July 27, 1983, and advised OSMRE that it would amend its regulations (PA 86.171) to rectify the matter. In the **Federal Register** dated September 6, 1983 (48 FR 40223), OSMRE imposed condition (k).

II. Submission of Program Amendments

On November 2, 1984, the Pennsylvania Department of Environmental Resources (DER) submitted program amendments to satisfy the requirements of the Secretary's conditions of approval of the Pennsylvania program listed at 30 CFR 938.11(d) and 938.11(k).

Condition (d) stipulates that Pennsylvania must submit to the Secretary copies of promulgated regulations, or otherwise amend its program to require (1) that the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is no less effective than 30 CFR 779.27, 783.27 (now cited at 30 CFR 785.17(b)), and in accordance with section 507(b)(16) of SMCRA; (2) that the applicant obtain with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is no less effective than 30 CFR 786.19(1) and section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) (now cited at 30 CFR 800.40(c)(2))in accordance with section 519(c)(2) of SMCRA.

Condition (k) stipulates that Pennsylvania must submit to the Secretary a copy of promulgated regulations or other amendments to its program to contain provisions no less effective than 30 CFR 800.40 (b)(2) and (f) to require the State to hold a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference has been held.

In addition to amendments to satisfy conditions (d) and (k), Pennsylvania also submitted for OSMRE's approval proposed changes amending sections 88.24, 88.30, 88.134, 88.135, 88.136, 88.137, 88.491 of Pennsylvania's regulations.

OSMRE announced receipt of the amendments and initiated a public comment period on January 4, 1985 (50 FR 486). The comment period closed on January 24, 1985.

During review of the amendments, OSMRE identified some concerns related to anthracite operations on prime farmland and to blasting operations within 500 feet of any active underground mine. OSMRE's concerns are fully explained in its letter to the State of April 24, 1985. On September 5, 1985, Pennsylvania responded to the issues raised by OSMRE.

The proposed amendments of November 2, 1984, and the subsequent material are available for review, in full text, at the addresses listed above under **"ADDRESSES"**. OSMRE seeks public comment on whether the proposed modifications to the Pennsylvania permanent program listed above satisfy the Secretary's conditions of approval (d) and (k) and meet the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. If the

Secretary determines the proposed modifications are consistent with SMCRA and no less effective the OSMRE's regulations, the amendments will be approved, and 30 CFR 938 modified accordingly.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86-2690 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 154, and 155

[CGD 85-026]

Pollution Prevention, Implementation of Amendments to MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the oil pollution prevention regulations for ships in order to implement the amendments and interpretations to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) that were adopted at the 20th Session of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) and correct the MARPOL 73/78 implementing final rulemaking of October 6, 1983 (48 FR 45704).

Implementation of these provisions will maintain the desired parallel between U.S. regulations and the international requirements of MARPOL 73/78. Maintaining this parallel will help to ensure U.S. ships will be in compliance with mandatory international requirements thereby allowing them to engage in uninterrupted international trade while at the same time helping to ensure the U.S. shipping industry is not unnecessarily burdened with regulatory requirements not mandated by MARPOL 73/78. Ships which do not comply with these regulations will not be in compliance with MARPOL 73/78 as amended and may therefore encounter difficulties in international trade.

DATE: Comments must be received by March 24, 1986.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24) (CGD 85-026), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593. Comments will be available for inspection and copying from 7:00 a.m. to 3:30 p.m., Monday through Friday, except holidays at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477. The amendments and interpretations to MARPOL 73/78 are contained in the IMO publication "Supplement to the Regulations for the Prevention of Pollution by Oil." Copies of this publication can be obtained from the International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, England for 2.5 English pounds (publication no. 527.85.06.E).

FOR FURTHER INFORMATION CONTACT: Lieutenant R.J. Jones, Office of Marine Environment and Systems (G-WER-3), Room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washigton, DC 20593 (202) 426-9573.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 85-026), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self addressed postcard.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in the drafting of this proposal are Lieutenant R.J. Jones, Project Officer, Office of Marine Environment and Systems (G-WER-3), and Michael N. Mervin, Project Attorney, Office of the Chief Counsel (G-LRA).

Background

A Final Rulemaking implementing MARPOL 73/78, Annex I was published October 6, 1983 (48 FR 45704). At the 20th Session of the MEPC held in London September 3-7, 1984, certain amendments and interpretations to MARPOL 73/78, Annex I were adopted. The amendments and interpretations were circulated to all parties to MARPOL 73/78 for comment. No comments were received therefore the amendments and interpretations entered into force July 1985. Some of these amendments and interpretations required U.S. regulatory changes.

The Coast Guard was able to foresee most of these Amendments and Interpretations and provided for them in the MARPOL 73/78, Annex I implementing final rulemaking (48 FR 45704). However, some of the Amendments and Interpretations were not foreseen because they were not proposed until after 48 FR 45704 was published. They now require U.S. regulatory changes and are summarized below.

Regulation 21 was amended to increase the maximum permissible discharge of oily water for stationary drilling rigs outside special areas and more than 12 nautical miles from nearest land from 15 parts per million (ppm) to 100 ppm.

Regulation 16 was amended to incorporate provisions for the granting of waivers from the oily-water separating equipment requirements for specific ships operating in special areas, within 12 miles of land, or in restricted voyages.

Discussion of the Proposed Rules

Though most of the proposed regulations are self-explanatory, the following discussion is offered in hope that it might add some clarification, stimulate public response, and show variations between proposed and existing rules. The proposed regulations implement amendments and interpretations to MARPOL 73/78, Annex I, correct existing 33 CFR Parts 151 and 155, and improve existing regulations. 33 CFR Parts 151, 154, and 155 are proposed to be revised.

1. In Part 151, the authority citation is included to comply with Federal Register procedures.

2. Section 151.05, Definitions is amended to make the definition of Clean Ballast contained in Part 151 identical to that of Part 157.

3. Section 151.07, Delegations, is expanded simply to clarify that the authority to investigate MARPOL 73/78 related incidents is delegated to Coast Guard officials designated as Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI).

4. In § 151.09, Control of discharge of oil, paragraphs (a) and (d) are amended to incorporate the MARPOL 73/78 amendment to Regulation 21 adopted at the 20th Session of the MEPC that

changes the discharge standards for drilling rigs and other platfoms so that they can now discharge oily mixtures at 100 ppm (oil to water) while stationary, provided they are outside special areas and more than 12 nautical miles from the nearest land. Other ships must still not exceed 15 ppm when discharging oily mixtures while stationary, wherever located.

5. In § 151.13, Special areas, paragraph (d)(5) is amended to be more specific in requiring the 15 ppm oily-water separating equipment and bilge alarm of MARPOL 73/78, Regulation 10. The October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704) lacked the necessary specificity. it is revised to require oily-water separating equipment complying with paragraph § 155.370 (a)(2) of this part rather than simply Part 155.

6. In § 151.15, Reporting requirements, paragraph (e) is revised to clarify (as stressed at the 21st Session of the MEPC) that the reporting requirements of Protocol I to MARPOL 73/78 do apply to discharges of hazardous substances (noxious liquid substances and harmful substances) as well as to oil. Paragraph (i) is added to incorporate the reporting provision contained in the "Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region" of the "Conference of Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region", known as the Cartagena Agreement. The U.S. is party to this Treaty and as such is complying with this provision by strongly encouraging persons to report any information regarding sightings or knowledge of marine pollution incidents. Reports should be directed to the coastal state nearest to the location of the incident. Compliance with this provision is strictly voluntary, it is not a requirement to report.

7. In § 151.19, International Oil Pollution Prevention (IOPP) Certificates, paragraph (f) is removed. It is an exclusionary clause for existing ships which became outdated as of October 2, 1984.

8. Section 151.25, Oil Record Book, is amended to indicate that Oil Record Books will not longer be available from the Coast Guard. Instead Oil Record Books may be purchased through the Government Printing Office.

9. In § 154.105 the definition of "tank vessel" is revised to follow the language of 46 U.S.C. 2101.

10. In Part 155, the authority citation is amended to more accurately indicate the statutory authority for each section in order to more easily differentiate between requirements based on the Federal Water Pollution Control Act, as amended and those based on the Act to Prevent Pollution from Ships.

11. In § 155.100, the applicability is amended so that Subpart C will no longer apply to fixed drilling rigs and fixed platform and will no longer apply to ships operating beyond the navigable waters and contiguous zone of the U.S. In the October 6, 1983 final rulemaking (48 FR 45704) the applicability to Part 155 of this chapter was expanded so that the applicability of Subpart B would parallel that of MARPOL 73/78 and apply to "ships" wherever located. As a result, the applicability of Subpart C was also expanded. This is simply being corrected.

12. Section 155.110, Definitions, is revised to include the definition of "oil" from 33 U.S.C. 1321(a)(1) because Part 155 should apply to all oils including animal and vegetable oils, as it did in the past. In Part 155, the term oil should not be limited to petroleum oils as the definition of § 151.05(k) would wrongly imply.

13. Section 155.120, Equivalents, is revised to specify that the Chief, Office of Marine Environment and Systems (Commandant (G–W)) will exercise the authority to grant equivalents and that equivalents will be submitted via the OCMI.

14. Section 155.130, is amended to re-incorporate the pre-MARPOL 73/78 rulemaking (48 FR 45704) provision authorizing Coast Guard COTPs and OCMIs to allow certain alternative procedures, methods, or equipment standards for certain ships. This authority is more finely delineated so that the public will know to whom to submit requests and who is acting on these requests. OCMIs will have the authority to allow alternatives to Subpart B requirements for U.S. flag ships and COTPs will have the authority to allow alternatives to Subpart C requirements for all ships and to Subpart B requirements for foreign flag ships. The authority to grant exemptions remains with the Commandant. Requests for exemptions should be addressed to the Chief, Office of Marine Environment and Systems, mailing address: Commandant (G–W), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

15. Section 155.310, Cargo oil discharge containment, is amended so that paragraph (a) will apply to "tank vessels" rather than to "oil tankers". In the interest of using standard MARPOL 73/78 terminology, the October 1983 rulemaking (48 FR 45704) erroneously changed the applicability of this section from "tank vessel" to "oil tanker". This was a mistake because not all "tank vessels" are "oil tankers". "Oil tanker" is defined as a ship constructed or adapted primarily to carry oil in bulk as cargo whereas "tank vessel" is defined more broadly but also includes a vessel that carries oil in bulk as cargo.

The Coast Guard believes that this correction will affect very few ships and will therefore have a minimal impact. To be affected, a ship would have to carry oil in bulk as cargo but not be an "oil tanker" and would have to be constructed without the containment provisions. These prerequisites limit the impact to a very small universe. Very few ships other than oil tankers carry oil in bulk as cargo and of those that do, virtually all continue to comply with the discharge containment requirements. The only ships that would not be in compliance with the discharge containment requirements would be those that just began U.S. operations within the past two years (since the incorrect rules have been in effect). Only one ship thus far has fallen into this category, an offshore supply vessel that carried oil in bulk as cargo for use on offshore platforms switched from foreign to U.S. operations. The Coast Guard informed the ship owner that the rules were mistakenly changed to apply to "oil tankers" and that the Coast Guard intended to correct this oversight by changing the applicability back to "tank vessels". The ship owner decided to modify his ship to comply with these containment requirements.

Paragraph (a) of this section is being corrected to read exactly as it did prior to the October 1983 rulemaking (48 FR 45704). This is not a new requirement since it existed prior to the October 1983 rulemaking (48 FR 45704).

16. In § 155.320, Fuel oil and bulk lubricating oil discharge containment, paragraph (c) is being revised so the requirements of this section will apply to Mobile Offshore Drilling Units (MODUs) as they did prior to the October 6, 1983 rulemaking (48 FR 45704). This is not a new requirement; it existed prior to the October 1983 rulemaking (48 FR 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/78 requirement that did and still should apply to MODUs; only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all

MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

17. In § 155.330, Bilge slops/fuel oil tank ballast water discharges on U.S. non-oceangoing ships, and § 155.350, Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons, paragraph (b) is removed to eliminate any indication that the Coast Guard condones the practice of retaining oily mixtures in a ship's bilges. For safety reasons, the Coast Guard strongly discourages this practice. Title 46 of the Code of Federal Regulations, does not allow the accumulation of oil, in machinery space tank tops and bilges, which might create a fire hazard. In order to avoid what could be an overly burdensome requirement on a few specific ships, the Coast Guard does not require oily residue (sludge) tanks on non-oceangoing ships. However, on any ship where oily mixtures are retained on board, it must not threaten safety by creating a fire hazard. The Coast Guard strongly recommends that oily residue (sludge) tanks be provided on all ships where practicable. Additionally, paragraph (c) of § 155.330 and paragraph (d) of § 155.350 are revised so that the requirements of these sections will apply to Mobile Offshore Drilling Units (MODUs) as they did prior to the October 6, 1983 rulemaking (48 FR 45704). This is not a new requirement, it existed prior to the October 1983 rulemaking (48 FR 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/83 requirement that did and still should apply to MODUs; only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

18. In § 155.360, Bilge slops discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks, the exclusionary clause contained in paragraph (f) for existing ships is corrected so that the October 2, 1986 delay only applies to the oily-water separating equipment requirements of paragraphs (a) and (b). Prior to the October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704), 33 CFR 155.340 required to be equipped to discharge bilge slops to shore. The three year delay of MARPOL 73/78 only applies to the oily-water separating equipment requirements, not to the piping requirement for discharge of machinery space bilge slops to reception facilities. Ships must be able to discharge to reception facilities.

19. In § 155.370, Bilge slops/fuel oil tank ballast discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks, the exclusionary clause contained in paragraph (g) for existing ships is corrected so that the October 2, 1986 delay only applies to the oily-water separating equipment requirements of paragraphs (a) and (b). Prior to the October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704), 33 CFR 155.340 required ships to be equipped to discharge bilge slops to shore. The three year delay of MARPOL 73/78 only applies to the oily-water separating equipment requirements, not to the piping requirement for discharge of machinery space bilge slops to reception facilities. Ships must be able to discharge to reception facilities.

20. Section 155.375, Oily-water separating equipment waivers, is added to incorporate the MARPOL 73/78 amendment that allows specific ships operating within special areas, within 12 miles of land, or on restricted voyages to obtain oily-water separating equipment waivers.

21. Section 155.380, Oily-water separating equipment, bilge alarm, and bilge monitor approval standards, is amended in order to clarify that a 15 ppm bilge alarm, installed to comply with the equipment requirements of § 155.370 or being operated to comply with the discharge standards of §§ 151.09 or 151.13 of this chapter, must be set at 15 ppm. The bilge alarm sensor can not be adjusted from its 15 ppm setting to operate at 100 ppm when more than 12 nautical miles from land, this is not permitted under MARPOL 73/78 and would be a violation of U.S. law.

22. Section 155.400, Platform machinery space drainage on oceangoing fixed or floating drilling rigs and other platforms, is amended to incorporate the MARPOL 73/78 amendment that drilling rigs and other platforms can discharge oily mixtures at 100 ppm (oil to water) when stationary rather than at 15 ppm. Paragraphs (b) and (c) which simply emphasized the applicability of the discharge requirements of section 151.09 to drilling rigs and other platforms are removed.

23. In § 155.410, Pumping, piping and discharge requirements for non-oceangoing ships of 100 gross tons and above, paragraph (c) is amended so that the requirements of this section will apply to MODUs as it did prior to the October 6, 1983 rulemaking (48 Fr 45704). This is not a new requirement; it existed prior to the October 1983 rulemaking (48 Fr 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/78 requirement that did and still should apply to MODUs, only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

24. Section 155.450 is revised to include the discharge limitations of the Act to Prevent Pollution from Ships. A future change to discharge limitations may occur as a result of an EPA regulatory project to define a quantity of oil which "may be harmful" in the U.S. Exclusive Economic Zone (EEZ). Depending on the status of the EPA rulemaking, this section may be changed prior to the publication of the final rulemaking.

Summary of Draft Evaluation

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In

addition, these proposed regulations are considered to be non-significant under DOT regulatory policy and procedures (44 CFR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the public rulemaking docket.

There should be no costs incurred as a result of these regulations. Overall, there should be either no economic effect or a slight decrease in cost.

The primary benefit of this regulatory project will be the improvement to existing 33 CFR Parts 151, 154 and 155 by incorporating the amendments and interpretations that were adopted at the 20th session of the MEPC and that the U.S., as a party to MARPOL 73/78, Annex I, agreed to adopt. The secondary benefit will be the correction of minor errors that were made in the MARPOL 73/78, Annex I implementing rulemaking and the removal of outdated provisions.

Implementation of these provisions will maintain the desired parallel between U.S. regulations and the international requirements of MARPOL 73/78. Maintaining this parallel will help to ensure U.S. ships will be in compliance with mandatory international requirements thereby allowing them to engage in uninterrupted international trade while at the same time helping to ensure the U.S. shipping industry is not unnecessarily burdened with regulatory requirements not mandated by MARPOL 73/78. Ships which do not comply with these regulations will not be in compliance with MARPOL 73/78 as amended and may therefore encounter difficulties in international trade.

Regulatory Flexibility Analysis

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed changes are primarily clarifications and minor relaxations. They do not impose any burden on any small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in §§ 151.15 and 155.130. They will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Assessment

The Environmental Assessment prepared for this regulatory project indicated that this rulemaking will not have a significant effect on the environment therefore a Finding of No Significant Impact (FONSI) has been issued.

List of Subjects in 33 CFR Parts 151, 154, and 155

Environmental Protection, pollution, Oily-water separating equipment.

For reasons set out in the preamble, Parts 151, 154, and 155, Subchapter O, Chapter I of Title 33, Code of Federal Regulations are proposed to be amended as follows:

PART 151—[AMENDED]

1. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b), E.O. 11735, 49 CFR 1.46(m).

2. Section 151.05 is amended by revising paragraph (a) to read as follows:

§ 151.05 Definitions.

* * * * *

(a) "Clean Ballast" means ballast which:

(1) If discharged from a vessel that is stationary into clean, calm water on a clear day, would not:

(i) Produce visible traces of oil on the surface of the water or on adjoining shore lines; or

(ii) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shore lines; or

(2) If verified by an approved cargo monitor and control system, has an oil content that does not exceed 15 ppm.

* * * * *

3. Section 151.07 is revised to read as follows:

§ 151.07 Delegations.

Each Coast Guard official designated as a Captain of the Port (COTP) or Officer in Charge Marine Inspection (OCMI) or Commanding Officer, Marine Safety Office (MSO), is delegated the authority to—

(a) Issue International Oil Pollution Prevention (IOPP) Certificates;

(b) Detain or deny entry to ships not in substantial compliance with MARPOL 73/78 or not having an IOPP Certificate on board or not having evidence of compliance with MARPOL 73/78 on board;

(c) Receive and investigate reports under § 151.15;

(d) Issue subpoenas to require the attendance of any witness and the production of documents and other evidence, in the course of investigations of potential violations of the Act to Prevent Pollution from Ships (33 U.S.C 1901–1911, Pub. L. 96–478), MARPOL 73/78, or related provisions contained in this sub-chapter; and

(e) Investigate casualties, pollution incidents and other potential violations; relating to the requirements of the Act to Prevent Pollution from Ships (33 U.S.C. 1901–1911, Pub. L. 96–478), MARPOL 73/78, or related provisions contained in this sub-chapter.

4. In § 151.09, paragraphs (a)(4) and (d) are revised to read as follows:

§ 151.09 Control of discharge of oil.

(a) * * *

(4) The ship, providing it is not a fixed or floating drilling rig or other platform, is proceeding enroute;

* * * * *

(d) Except for a fixed or floating drilling rig or other platform, any discharge of oil or oily mixtures into the sea from a ship other than an oil tanker or from machinery space bilges of an oil tanker; that is not proceeding enroute; must be in accordance with paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

* * * * *

5. In § 151.13, paragraph (d)(5) is revised to read as follows:

§ 151.13 Special areas.

* * * * *

(d) * * *

(5) The ship has in operation oily-water separating equipment complying with § 155.370(a)(2) of this chapter; and

* * * * *

6. Section 151.15 is amended by revising paragraph (e) and adding paragraph (i) to read as follows:

§ 151.15 Reporting requirements.

* * * * *

(e) The report must be made whenever an incident involves—

(1) A discharge of oil other than as permitted under this part;

(2) A discharge of a hazardous substance; or

(3) A discharge permitted under this part by virtue of the fact that—

(i) It is for the purpose of securing the safety of a ship or saving life at sea; or

(ii) It results from damage to the ship or its equipment; or

(4) The probability of a discharge referred to in paragraphs (e)(1), (e)(2), or (e)(3) of this section.

* * * * *

(i) Any person sighting or otherwise becoming aware of an oil or other hazardous substance spill incident is encouraged to report the specifics of the sighting to the appropriate officer or agency of the country that is closest to where the incident is detected. For an incident off the U.S. coast, the report should be directed to either the nearest Coast Guard Captain of the Port (COTP) or to the National Response Center (NRC), toll free telephone number 800-424-8802, telex number 892427.

7. Section 151.19 is amended by removing paragraph (f).

8. In § 151.25, paragraph (b) is revised and paragraph (c) is removed and reserved to read as follows:

§ 151.25 Oil Record Book.

* * * * *

(b) U.S. ships will use the U.S. Oil Record Book which is available from any Government Printing Office (stock number: 050-012-00213-4).

(c) [Reserved]

* * * * *

PART 154—[AMENDED]

9. The authority citation for Part 154 is revised to read as follows and all other authority citations which appear throughout Part 154 are removed:

Authority: 33 U.S.C. 1321(j)(1)(C), E.O. 11735, 3 CFR, 1971 through 1975 Comp., p. 793, and 49 CFR 1.46(m).

10. Section 154.105 is amended by revising the definition of "Tank vessel" to read as follows:

§ 154.105 Definitions.

* * * * *

"Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

PART 155—[AMENDED]

11. The authority citation for Part 155 is revised to read as follows and all other authority citations which appear throughout Part 155 are removed:

Authority: 33 U.S.C. 1321(j)(1)(C), E.O. 11735, and 49 CFR 1.46(m); §§ 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1902(c) and 1903(b).

12. Section 155.100 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 155.100 Applicability.

(a) Subject to the exceptions provided for in paragraphs (b) and (c) of this section, this part applies to each ship that—

* * * * *

(c) Subpart C only applies to vessels that operate on the navigable waters or contiguous zone of the U.S. and does not apply to a fixed drilling rig or other fixed platform.

13. Section 155.110 is revised to read as follows:

§ 155.110 Definitions.

(a) The definitions in Parts 151 and 154 of this chapter apply to this part except as modified in paragraph (b) of this section.

(b) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

14. Section 155.120 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 155.120 Equivalents

(a) The Chief, Office of Marine Environment and Systems, acting for the Commandant, allows any fitting, material, appliance or apparatus to be fitted in a ship as an equivalent to that required by both MARPOL 73/78 and §§ 155.350, 155.360, 155.370, 155.375, 155.380, 155.390, 155.400, 155.430, or 155.440 of this part if—

(1) Such fitting, material, appliance, or apparatus is at least as effective as that required; and

(2) The ship operator submits a written request for the exemption via the OCMI at least 30 days before operations under the equivalent are proposed.

* * * * *

(c) Substitution of operational methods to control the discharge of oil in place of those design and construction features prescribed by MARPOL 73/78 is not allowed as an equivalent.

15. Section 155.130 is revised to read as follows:

§ 155.130 Exemption and alternatives.

(a) The Chief, Office of Marine Environment and Systems, acting for the Commandant, grants an exemption from compliance with any requirement in this part if—

(1) Compliance with the requirement is economically or physically impractical;

(2) The ship operator submits a written request for the exemption via the OCMI at least 30 days before operations under the exemption are proposed; and

(3) The likelihood of oil being discharged as a result of the exemption is minimal and is documented in the request.

(b) For U.S. flag ships; the OCMI allows alternative precedures, methods, or equipment standards in lieu of any requirement of §§ 155.310, 155.320, 155.330, 155.410, 155.420, 155.450, 155.470, of this part; and the OCTP allows alternative procedures, methods, or equipment standards in lieu of any requirement of Subpart C of this part if—

(1) Compliance with the requirement is economically or physically impractical;

(2) The ship operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed; and

(3) The alternative provides an equivalent level of safety and protection from pollution by oil, as documented in the request.

(c) For foreign flag ships, the COTP allows alternative procedures, methods, or equipment standards in lieu of any requirement of §§ 155.310, 155.320, 155.330, 155.410, 155.420, 155.450, 155.470, and Subpart C of this part if—

(1) Compliance with the requirement is economically or physically impractical.

(2) The ship operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed; and

(3) The alternative provides an equivalent level of safety and protection from pollution by oil, as documented in the request.

(d) If requested, the applicant must submit any appropriate information, including an environmental and economic assessment of the effects of and the reasons for the exemption and proposed procedures, methods, or equipment standards.

(e) The exemption or alternative specifies the procedures, methods, and equipment standards that will apply.

(f) An exemption is granted or denied in writing. The decision of the Chief, Office of Marine Environment and Systems, acting for the Commandant is a final agency action.

(g) An alternative is granted or denied in writing by the OCMI or COTP. Decisions by the OCMI or COTP may be appealed to the Chief, Office of Marine Environment and Systems. The denial of an appeal by the Chief, Office of Marine Environment and Systems, acting for the Commandant, is a final agency action.

(h) A ship required to be surveyed under § 151.17 of this chapter is not given an exemption from the requirements of §§ 155.350, 155.360, 155.375, 155.380, 155.390, 155.400, 155.430, or 155.440, of this part unless the ship is a hydrofoil, air cushion vehicle or other new type of ship (near-surface craft, submarine craft, etc.) whose construction features render the application of any of the provisions of these sections of Subpart B relating to construction and equipment unreasonable or impractical. The construction and equipment of the ship must provide protection equivalent to that afforded by Subpart B of this part against pollution by oil, having regard to the service for which the ship is intended.

16. Section 155.310 is amended by revising paragraph (a) introductory text to read as follows:

§ 155.310 Cargo oil discharge containment.

(a) A tank vessel with a capacity of 250 or more barrels that is carrying oil cargo must have:

* * * * *

17. Section 155.320 is amended by revising paragraph (c) to read as follows:

§ 155.320 Fuel oil and bulk lubricating oil discharge containment.

* * * * *

(c) This section does not apply to a fixed drilling rig or other fixed platform.

18. Section 155.330 is amended by removing paragraph (b) and revising paragraph (c) to read as follows:

§ 155.330 Bilge slops/fuel oil tank ballast water discharges on U.S. non-oceangoing ships.

* * * * *

(b) [Reserved]

(c) This section does not apply to a fixed drilling rig or other fixed platform.

19. Section 155.350 is revised by removing paragraph (b) to read as follows:

§ 155.350 Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

* * * * *

(b) [Reserved]

* * * * *

20 In § 155.360 paragraph (f) is revised to read as follows:

§ 155.360 Bilge slops discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

* * * * *

(f) Paragraphs (a) and (b) of this section do not apply to an existing ship before October 2, 1986.

21. In § 155.370 paragraph (g) is revised to read as follows:

§ 155.370 Bilge slops/fuel oil tank ballast discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

* * * * *

(g) Paragraphs (a) and (b) of this section do not apply to an existing ship before October 2, 1986.

22. Section 155.375 is added to read as follows:

§ 155.375 Oily-water separating equipment waivers.

(a) The requirements of paragraph (a) of §§ 155.360 and 155.370 of this part may be waived by an OCMI for any ship engaged exclusively on:

(1) Voyages within special areas; or

(2) Voyages within 12 nautical miles of the nearest land outside special areas, provided the ship is in:

(i) Trade between ports or terminals within a State party to MARPOL 73/78; or

(ii) Restricted international voyages between specified ports.

(b) For paragraph (a) of this section to apply, all of the following conditions must be satisfied:

(1) The ship is fitted with a holding tank having a volume adequate for the total retention on board of all oily bilge water;

(2) All oily bilge water is retained on board for subsequent discharge to reception facilities;

(3) Adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals at which the ship calls;

(4) The International Oil Pollution Prevention Certification of Form A or B, as appropriate, is endorsed to the effect that the ship is exclusively engaged on the voyages specified in paragraph (a) of this section, including a list of ports, the maximum duration of voyages between ports, trade pattern, and other conditions, as applicable; and

(5) The quantity, time, and port of all discharges to reception facilities are recorded in the Oil Record Book.

23. Section 155.380 is amended by adding paragraph (e) to read as follows:

§ 155.380 Oily-water separating equipment, bilge alarm, and bilge monitor approval standards.

* * * * *

(e) A bilge alarm installed to satisfy the equipment requirements of § 155.370 or being operated to satisfy the operational discharge requirements of §§ 151.09 or 151.13 of this Subchapter must be set at 15 parts per million.

24. Section 155.400 is amended by removing paragraphs (b) and (c), to read as follows:

§ 155.400 Platform machinery space drainage on oceangoing fixed and floating drilling rigs and other platforms.

* * * * *

(b)–(c) [Reserved]

* * * * *

25. In § 155.410, paragraph (c) is revised to read as follows:

§ 155.410 Pumping, piping and discharge requirements for non-oceangoing ships of 100 gross tons and above.

* * * * *

(c) This section does not apply to a fixed drilling rig or other fixed platform.

26. Section 155.450 is revised to read as follows:

§ 155.450 Placard.

(a) A ship of 26 feet in length or more, must have a placard of at least 5 by 8 inches, made of durable material, fixed in a conspicuous place in each machinery space, or at the bilge and ballast pump control stations, stating the following—

The Discharge of Oil is Prohibited

U.S. Law prohibits the discharge of oil in a quantity which may be harmful into or upon the navigable waters of the United States (within 3 nautical miles offshore). Discharges of oil are also prohibited beyond 3 nautical miles offshore, except through approved equipment in strict compliance with 33 CFR Part 151 which implements MARPOL 73/78. Violators are subject to a civil penalty of up to $25,000. A "quantity of oil which may be harmful" is defined for the navigable waters and contiguous zone of the United States as any quantity which when discharged causes a film or sheen upon or a discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water.

Report prohibited discharges of oil in waters within the U.S. jurisdiction to either the nearest Coast Guard Captain of the Port (COTP) or to the National Response Center (NRC), toll free telephone number 800–424–8802, telex number 892427.

(b) The placard required by paragraph (a) of this section must be printed in the

language or languages understood by the crew.

(c) This section is effective (12 months after date of publication of final rule). Previously authorized placards may continue to be used.

Dated: February 3, 1986.

Peter J. Rots,

Chief, Office of Marine Environment and System.

[FR Doc. 86-2631 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 13

Commissions for Federally Appointed Fiduciaries

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The proposed new regulation will place into effect section 207 of Pub. L. 98-223, Veterans Compensation and Improvement Amendments of 1984, which relates to commissions for Federally appointed fiduciaries. The regulation will give the Veterans Services Officer the authority to determine, within the regulatory guidelines, which Federally appointed fiduciary will be allowed to take a commission and the amount of the commission not to exceed 4 percent of VA benefits paid in any one year on behalf of an incompetent beneficiary.

DATES: Comments must be received on or before March 24, 1986. It is proposed to make this regulation effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 7, 1986.

FOR FURTHER INFORMATION CONTACT: William B. Saliski, (202) 389-3644.

SUPPLEMENTARY INFORMATION: The Veterans Administration in recent years found it to be increasingly difficult to encourage qualified individuals to take on the responsibilities of Federally appointed fiduciaries without some sort of compensation for the time involved in managing the economic affairs of incompetent beneficiaries and complying with accounting and other protective requirements that are designed to reduce the potential for fraud, waste and abuse of VA benefits. In many instances the qualified person is not a family member. Such persons may be professional members of the community who feel the need to provide a public service to the community by taking on fiduciary responsibilities. In the past, these same people generally have served as count-appointed fiduciaries and as such could petition the court for fees and commissions under State statute. But court-appointment is not always desirable, particularly when the amount of benefits payable is relatively small and/or the residual estate is not large enough to warrant the time and additional costs associated with court-appointment. Because no clear authority existed to allow a commission to a Federally appointed fiduciary until the enactment of Pub. L. 98-223, the VA had little choice but to seek in some cases unnecessary, costly court-appointment of fiduciaries in order to allow qualified persons to receive payment for service rendered, or to seek lesser qualified persons willing to serve without fee. In some extreme cases, when neither option was available, benefits payments continued to the incompetent beneficiary as a supervised direct payment payee under the supervision of the Veterans Services Officer.

The effective date of the regulations will be 30 days after publication of the final rule.

This regulation simply interprets and implements Pub. L. 98-223. The Administrator hereby certifies that this new regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA (Regulatory Flexibility Act), 5 U.S.C. 601-612. The reason for this certification is that, consistent with the clear intent of Pub. L. 98-223, only a relatively small number of VA cases are expected to fall under the provisions of the regulation. Therefore, pursuant to 5 U.S.C. 605(b), this new regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed new regulation is nonmajor for the following reasons: (1) It will not have an effect on the economy of $100 million or more; (2) It will not cause a major increase in costs or prices; (3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 13

Administrative practice and procedure, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

There is no affected Catalog of Federal Domestic Assistance Program number.

This proposed regulation contains no information collection requirements.

Approved: January 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator

PART 13—[AMENDED]

38 CFR Part 13, Department of Veterans Benefits Fiduciary Activities, is amended to read as follows:

1. Section 13.64 is added to read as follows:

§ 13.64 Fiduciary commissions.

Generally, a VA appointed fiduciary is to be encouraged to serve without fee.

(a) *Authority.* The Veterans Services Officer is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Services Officer may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.

(b) *Amount; notice to beneficiary.* The Veterans Services Officer shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by the VA on behalf of the beneficiary to the fiduciary during that year; a year being the normal 12 month period following the anniversary date of appointment. The Veterans Services Officer shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) *Persons who may be excluded.* Commissions may not be authorized to

dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.

(38 U.S.C. 3202; Pub. L. 98–223)

§ 13.70 [Amended]

2. In § 13.70, paragraphs (a)(1), (a)(2), and (c) are amended by removing the words "wife, husband" and inserting in their place, the word "spouse."

3. In § 13.71, paragraph (b) is revised to read as follows:

§ 13.71 Payment of cost of veteran's maintenance in institution.

* * * * *

(b) *By care and maintenance award.* When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by the VA, who has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his or her estate has reached $1,500, the Veterans Services Officer may certify to the Adjudication Division the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts paid in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation. (See §§ 13.74(b) and 13.108(b).) (38 U.S.C. 210)

[FR Doc. 86–2733 Filed 2–6–86; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[OW-FRL-2961-9]

Hazardous Wastes Injection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to discuss the Agency's approach to the hazardous waste injection restriction program mandated by the RCRA Amendments of 1984. Particularly, the Agency will discuss possible amendments to the UIC Permitting Regulations, options for the overall framework of the restriction program and issues in the interpretation of the Statute.

DATE: This meeting will take place on February 21, 1986 beginning at (9:00 a.m.

ADDRESS: This meeting will be held at the Environmental Protection Agency (EPA) Headquarters, North Conference Center, Room 3, 401 M Street, SW., Washington, DC 20460. Any member of the public wishing to attend this open meeting should register in advance. Registration is necessary so EPA can better plan for adequate conference room space.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Shaw, Program Coordinator, Office of Drinking Water (WH–550), EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–5533.

Dated: February 4, 1986.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 86–2835 Filed 2–6–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Amend Regulations To Authorize the Private, Noncommercial Possession of Accidentally Killed Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document announces the advance intent of the Fish and Wildlife Service (Service) to initiate activity leading to a proposed rulemaking to amend existing regulations prohibiting the taking and possession of migratory birds and to allow certain accidentally killed migratory birds to be possessed and utilized by taxidermists and subsequently by other individuals for private, noncommercial uses. The proposed rulemaking arises from the Petition for Rulemaking submitted by the National Taxidermists' Association (NTA) and published by the Service for public comment on July 13, 1983 [48 FR 32034], and the subsequent review by the Service of the comments received and discussions within the Service with commentors and Petitioner.

In response to the NTA Petition, the Service reviewed its personnel, budget and regulatory commitments, and has determined that, while the Service has the statutory authority and responsibility to regulate activities related to uses and possession of migratory birds, it does not have the personnel or the funds to undertake a system of national permits issued by the federal government and enforced by inspections by Service personnel.

At present the only potentially practical alternative identified by the Service to accede to the NTA Petition and allow private, non-commercial possession of non-game migratory bird specimens by individuals is one in which the burden falls primarily upon the states. This alternative is based upon the establishment of a core of minimum Federal standards to include a requirement that each specimen be officially identified, marked, and verified to have been accidentally, not intentionally, killed. These Federal standards would then be adopted and followed on a state-by-state basis by states determining that the private, non-commercial possession of migratory bird specimens is in conformity with its conservation program.

Because earlier public comment on the NTA Petition focused upon permits being a federal, rather than a state, activity and enforcement project, the Service seeks additional public comment upon two issues: first, whether it should alter its existing policies and regulations to allow individuals to possess accidentally-killed non-game migratory birds for private, non-commercial purposes; and, second, upon allowing this activity based on state permits issued under a general federal regulatory scheme, or some other alternative.

DATES: Comments on the advance notice of proposed rulemaking must be received in writing by April 8, 1986.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street NW., Washington, DC between the hours 8:00 am and 4:00 pm. Comments should bear the identifying notation REG 21–02–004090. All materials received, the NTA petition and all comments received in response to the publication of that petition by the Service, Service, and Law Enforcement Memoranda 52 (Rev. 1) and 91 referenced in that Petition may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Enforcement Specialist, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife

Service, U.S. Department of the Interior, P.O. Box 28006, Washington, DC 20005; telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: By public notice published July 13, 1983 (48 FR 32034) the Service acknowledged receipt of a Petition for Rulemaking to Amend Part 21 submitted by NTA and solicited public comment on the text of the Petition and NTA's proposal that the Department of Interior, acting through the Service, amend its regulations and change its policies to allow either by issuance of permit or by exemption the taking, possession, and other conduct currently prohibited with regard to certain migratory bird species.

The NTA Petition was submitted as the result of settlement negotiations in *Ballard* v. *United States*, No. 82–0445 (D.D.C.). The litigation concerned denial of a permit to a taxidermist to possess a "road-killed" red-tail hawk, a species protected pursuant to the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq., and regulations issued under that statute. Regulations restrict legal possession of non-game migratory species to those persons, not otherwise exempt, who possess permits issued by the Service. Generally, permits are issued only upon showing of benefit to migratory bird resources or for important scientific research, humane reasons, or other compelling justification. Service policy, articulated in Law Enforcement Memoranda 52 (Rev. 1) and 91, has generally limited issuance of permits to take, possess, and utilize the birds or carcasses, parts, feathers, nests, etc. of non-game migratory bird species which have been accidentally killed or removed from the wild, to schools, universities, museums, medical or veterinary research facilities, public educational or scientific research institutions, to individuals demonstrating a publicly beneficial educational or scientific need or to certain Native Americans affiliated with Indian tribes for tribal religious and ceremonial uses. Taxidermists and members of the general public have not been allowed to take, possess, or otherwise utilize these species; the Service's policy in this matter was based upon a perception that the treaties negotiated with Canada, Mexico, Japan and the U.S.S.R. concerning protection of migratory birds and implemented under the Migratory Bird Treaty Act indicated that personal possession and use of non-game migratory birds for decorative purposes was not a proper use of the public natural resource.

The policy was also based upon a belief that history indicated a previous large commercial market for these birds and their parts and feathers had been detrimental to some species, resulting in governmental action to control the taking and possession of the species, and that allowing personal possession and use on a general basis might encourage revival of a market, albeit illegal, for the birds, parts, feathers and nests. Effective enforcement of the Migratory Bird Treaty Act provisions requires that some method be used to differentiate between legally and illegally taken birds, including identification of those specimens which die naturally and by accident. The Service's limited resources make it impossible for the Service to examine on demand each migratory bird specimen to determine if it is the result of an accidental taking.

During the comment period on the NTA Petition and proposal for rulemaking, thousands of comments were received by the Service. 3143 signatures on a standard form petition supplied by NTA and 744 signatures on other types of petitions responded favorably to the proposal. 1107 other comments received in a standard form indicated support of the NTA Petition. 815 additional comments indicated support. 67 conservation or environmental groups stated that they opposed the proposal, as did 54 educational and scientific institutions. 16 State conservation agencies officially responded against the proposal. 300 general comments were also received opposing the NTA proposal. Numerous comments have continued to be received by the Service, both in support and opposition. Since the comment period closed on the NTA Petition.

Most States protect migratory birds making it illegal to possess non-game migratory birds for personal uses. The only potential alternative preliminarily identified by the Service to the NTA Peition places the administrative and enforcement burden on the states, rather than on the federal government, especially with regard to identification, marking and verification of cause of death of the bird specimen.

Although only 16 state conservation agencies responded to the NTA Petition, all of those responding opposed the proposal. Therefore, the Service feels that it should solicit additional comment on the alternative approach.

Further, NTA did not supply with its Petition and has not to date provided any documentation which meets the requirements imposed upon the Service for rulemaking in compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4231–4237; Executive Order 12291; the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.; or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Service has conducted internal discussions and has met with representatives of NTA to attempt to verify facts related to economic and environmental issues which must be determined by the Service. Compliance with the NEPA process and other regulatory impact analyses are ongoing within the Service, and the Service seeks public comment and participation in its evaluation of those issues.

A preliminary Determination of Effects with regard to this Advance Notice of Proposed Rulemaking has been prepared by the Service. A copy of the Determination of Effects of Advanced Intent to Propose Rulemaking may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**" The Service recognizes that this Determination reflects only tentative conclusions concerning any decisions with regard to proposed rulemaking and will continue its analysis of various possible regulatory and non-regulatory alternatives.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with regard to the proposed rulemaking; the extent of environmental review, including whether there is a need for a full environmental impact statement or an assessment; whether the potential economic consequences of proposed rulemaking require preparation of a regulatory impact analysis or a small entity flexibility analysis; and any other matters of concern to the commentors regarding the Service significantly changing its policies and amending the regulations to allow private, noncommercial possession and utilization of accidentally-killed non-game migratory bird species, to the location identified in the ADDRESSES section of this notice. Comments must be received on or before April 8, 1986.

Dated: January 29, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–2674 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 60218-6018]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1986–1987 fishing year for Atlantic mackerel, squids, and butterfish and requests public comments. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish preliminary initial specifications. This action will provide data and requests comments for the agency's determination of the initial specifications for the 1986–1987 fishing year.

DATE: Comments must be received on or before March 10, 1986.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, NOAA, State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on MAC/SQU/BUA—Annual Specifications."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, extension 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (January 4, 1984, 49 FR 402), stipulate at § 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the respective optimum yields (OYs) as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), total allowable levels of foreign fishing (TALFFs), and Reserves (if any) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. Procedures for determining the initial annual amounts are found at § 655.21. The Secretary is required to publish this notice by February 1 of each year and to provide for a 30-day comment period on the preliminary specifications.

These specifications are based on information submitted by the Mid-Atlantic Fishery Management Council (Council), including an analysis of the nine economic factors specified at § 655.21(b)(1)(ii). The Council's recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period. Recommendations by the New England Fishery Management Council were also considered. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** on or about March 15, 1986.

Specifications

The following table lists the preliminary initial specifications in metric tons (mt) for the maximum optimum yield (Max OY), allowable biological catch (ABC), allowable catch (AC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), Reserve, and total allowable level of foreign fishing (TALFF) for Atlantic mackerel, *Illex* and *Loligo* squid, and butterfish. These initial specifications are the amounts that the Regional Director proposes for the 1986–1987 fishing year beginning April 1, 1986, and ending March 31, 1987.

Preliminary Initial Specifications For Fishing Year April 1, 1986, Through March 31, 1987.

[In metric tons (mt)]

Specification	Squid		Butterfish	Atlantic mackerel
	Loligo	*Illex*		
Max OY [a]	44,000	30,000	*16,000	285,000
ABC	37,000	22,500	*16,000	
AC				262,000
IOY	31,828	14,928	12,678	262,000
DAH	31,150	14,250	12,000	[b] 126,500
DAP	29,500	12,000	12,000	14,000
JVP [c]	1,650	2,250		100,000
Reserve				67,750
TALFF [d]	678	678	678	67,750

[a] Up to the figure given.
[a] These are the maximum OYs as stated within the FMP.
[b] This amount includes 12,500 mt projected recreational catch.
[c] Consistent with Councils' guidelines, these initial amounts represent 50 percent of the "cap" JVP totals requested to date.
[d] Assures all initial TALFFs, but not Reserve, are allowed.

The Regional Director has determined that the IOY levels proposed for the 1986–1987 fishing year will result in the greatest overall benefit to the United States. These levels were set to promote growth in both the harvesting and processing sectors of the domestic industry in accordance with the mandates of the Magnuson Act. They were selected after lengthy meetings and consultation with both the Mid-Atlantic and New England Fishery Management Councils (Councils) and industry groups, and after reviewing the results of processor and joint venture surveys. Specifications give high priority, especially as to the squid amounts, to domestic users. This priority is based on reports filed with the Councils and information available to the NMFS which indicates that considerable interest and substantial investments exist among domestic business ventures. TALFF, therefore, has been set initially at the bycatch level and will be increased only if circumstances indicate that the U.S. industry will benefit and will not suffer adverse effects from allocation of TALFF. Obviously, foreign nations' performance will influence the disposition of TALFF, as recommended through and by the Councils.

Atlantic mackerel and butterfish specification amounts are similar to those of the previous fishing year. Atlantic mackerel specifications, especially Max OY, AC, and IOY, have increased because of the continual rebuilding of the mackerel stocks. The FMP allows that, if U.S. Atlantic mackerel landings during the year (including amounts authorized for joint ventures) increase above the final initial estimates, DAH and OY may be increased by similar amounts, up to the point where OY = AC. TALFF would not change from the amount specified at the beginning of a year as a result of such adjustments to DAH and OY. The proposed butterfish specification amounts for the upcoming fishing year has increased the DAH and DAP each by 1,000 mt.

The Council has submitted Amendment 2 to the FMP which, if implemented, will establish a 12-month fishing year starting January 1 of each year. If implemented during the 1986–1987 fishing year, the Agency will seek public comments and revise these specification amounts to reflect any change within the regulations and the specifications. Revised specifications will be proportioned to reflect the remainder of the 1986 calendar year.

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: February 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–2677 Filed 2–4–86; 12:09 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Helen Timber Sale; Republic Ranger Station—Colville National Forest; Ferry County, WA, Environmental Impact Statement; Cancellation

The Department of Agriculture, Forest Service has withdrawn its proposal for harvesting timber in the Thirteenmile Creek drainage of the Republic Ranger District.

The notice of intent, published in the **Federal Register** of January 2, 1986, is hereby rescinded (51 FR 44).

For further information, contact: Gus Nichols, District Ranger, Republic Ranger District, Republic, Washington, 99166; telephone (509) 775–3305.

Dated: January 23, 1986.

William D. Shenk,

Forest Supervisor.

[FR Doc. 86–2692 Filed 2–6–86 8:45 am]

BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement; Gallatin National Forest; Noxious Weed and Poisonous Plant Control

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to identify methods for controlling noxious weeds on the Gallatin National Forest.

The proposed Gallatin National Forest Plan has been prepared. One of the Forest-wide Standards and Guidelines was to contain present infestations and prevent the spread of noxious weeds.

The Gallatin National Forest has many acres of land that contain noxious weeds. These weeds have been identified as noxious by the State of Montana. These plants can severely effect the productivity of forest and rangelands. Infestations on National Forest lands have the potential to spread to adjacent private lands.

A range of alternatives for treating these sites will be considered. One of these will be no treatment of problem plants by any means. Other alternatives may include:

1. *Manual Treatment:* pulling or grubbing of noxious weeds with the possible use of handtools.

2. *Mechanical Treatment:* plowing, discing or cultivating infestations of noxious weeds with heavy equipment.

3. *Biological Control:* control of noxious weeds by the action of parasites, predators, and pathogens.

4. *Broadcast Application:* Application of herbicides by truck mounted sprayer to infestations of noxious weeds.

5. *Manual Application:* application of herbicides with spray nozzles, hand guns, or backpack compression sprayers to infestations of noxious weeds.

6 *Integrated Pest Management:* using a combination of the above methods.

Federal, State and local agencies, local landowners, and other individuals or organizations who may be interested in or affected by the decisions will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.

2. Identification of issues to be considered in depth.

3. Elimination of insignificant issues of those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat, if any such species are found to exist in the area of consideration.

No public meetings are scheduled at this time, but the public is invited to comment. Written comments should be mailed by February 21, 1986, to: Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, MT 59771.

Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, Bozeman, Montana, 59771, is the responsible official.

The Draft Environmental Impact Statement should be available for public review by April, 1986. The Final Environmental Impact Statement is scheduled to be completed by June, 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to Richard Inman, Range and Wildlife Staff Officer, Gallatin National Forest, phone: 406–587–6705.

Dated: January 31, 1986.

Robert E. Breazeale,

Forest Supervisor.

[FR Doc. 86–2668 Filed 2–6–86; 8:45 am]

BILLING CODE 3410–11–M

Statistical Reporting Service

Modification of Program Reports

Notice is hereby given that the Statistical Reporting Service (SRS) of USDA is proposing immediate modifications in portions of its crop, dairy, poultry, and prices estimating program. These actions are in response to the funding level provided to the Agency for fiscal year 1986. Available resources will be directed to maintaining high quality statistics for the more than 300 reports that will continue to be published by SRS.

SRS will work with commodity organizations and State agencies to reestablish programs being curtailed if funds for data collection, summarization, and publication can be provided by those organizations.

A. The following crop estimate program modifications are planned:

1. Discontinue pasture and range condition table and map and crop prospects map in the April Crop Production report. The Agency earlier proposed discontinuing the conditions in all months. Based on comments received from data users, the pasture and range condition table will be retained in the May-November Crop Production reports. The maps will be replaced by two crop moisture maps (short-term and long-term) prepared by the NOAA/USDA Joint Agricultural Weather Facility.

2. Grain stocks program:

a. Discontinue all rye stocks estimates.

b. Discontinue quarterly on- and off-farm stock estimates for barley, oats, sorghum, and sunflowers. Continue these commodity estimates at end-of-marketing year only (barley and oats,

June 1; sorghum and sunflowers, September 1).

c. Discontinue separate State on-farm stock estimates for other grains and oil seeds in minor producing States. Individual State estimates published will account for 75–85 percent of the total U.S. production for each crop. Minor States will be published as an "other State" total. United States estimates will be continued.

3. Field crop production program:

a. Discontinue winter wheat production forecasts in September.

b. Discontinue spring wheat production forecasts in October.

c. Discontinue all rye and flaxseed production forecasts. Retain acreage estimates and the end-of-year acres, yield, and production report.

d. Discontinue barley and oats production forecasts in July and September. Retain acreage estimates, August forecasts, and the end-of-year acres, yield, and production report.

e. Discontinue end-of-year forage estimates for corn and sorghum.

f. Discontinue sweetpotato production forecasts and disposition estimates. Retain acreage estimates and end-of-year acres, yield, and production report.

4. Discontinue all fertilizer production statistics collected and published by SRS.

5. Discontinue all Hop Production and Stock estimates. Data will not be collected for the March 1, 1986, stocks report which was scheduled to be released March 20, 1986.

B. The following reductions in State estimates for dairy and poultry reports are planned:

1. *Milk Production*—Coverage of estimates in the monthly reports will be reduced from 33 States and the U.S. to 21 States with about 85 percent of the U.S. production. Reports issued in January, April, July, and October will continue to include quarterly estimates for 50 States and the U.S. Estimates by month will be eliminated for Alabama, Arkansas, Colorado, Georgia, Kansas, Louisiana, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon and Utah beginning with the May 14, 1986, release of April production.

2. *Eggs, Chickens & Turkeys*—Coverage of layers and egg production estimates in the monthly reports will be reduced in coverage from 33 States and the U.S. to 20 States with about 84 percent of the U.S. production. Reports issued in March, June, September, and December will continue to include quarterly egg production estimates for 50 States and the U.S. Estimates by month will be eliminated for Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, Oklahoma, Oregon, Tennessee, Virginia and Wisconsin beginning with the April 23, 1986, release of March production.

3. *Weekly Broiler Hatchery*—Coverage of weekly estimates of broiler eggs set and chicks placed will be reduced from 19 States to 12 States with about 92 percent of the U.S. production. Monthly estimates of broiler chicks hatched in the U.S. will continue as currently published in Eggs, Chickens & Turkeys. States to be eliminated from the weekly coverage are Louisiana, Missouri, Oregon, South Carolina, Tennessee, Washington, and West Virginia beginning with data for week ending March 8 available for release March 12, 1986.

C. The following changes in the program of prices paid reports are planned:

1. The annual Telephone and Electric Survey will be discontinued.

2. Feed, fuels and motor supplies will be surveyed and published quarterly rather than monthly. Only regional and U.S. level prices will be estimated in this new quarterly survey, which will begin in April, due to reduced sample size. The last monthly survey for these items will be February 1986.

3. Fertilizer prices will be surveyed and published on a regional and U.S. basis in April and October of each year, instead of the current 4 surveys.

4. Seed prices will be surveyed annually in April of each year with U.S. level prices published rather than semi-annually by States.

5. Replacement livestock prices will be published on a U.S. level basis each quarter instead of monthly by States.

6. Building Materials will be surveyed in April, July, and October with prices published at the U.S. level compared with current bi-monthly State data.

7. Farm Machinery, Farm Supplies, and Marketing Containers will be surveyed semiannually in April and October (rather than quarterly) with prices published at the U.S. level.

8. Autos and trucks will be surveyed annually in April instead of semiannually with prices published at the U.S. level.

D. Modification in survey dates for quarterly stocks report:

In addition to those program modifications, the October 1 on-farm and off-farm grain stocks survey will be moved to September 1 and the dates of other quarterly reports shifted to a uniform quarterly time schedule. This is to reduce costs and responds to new legislation changing the official marketing year for corn from October 1—September 30 to September 1—August 31. The first new report will be issued on September 29, The January 1, 1987, stocks survey, including stocks of rice and hay, will be changed to December 1, 1986, and will be issued in early January 1987. The December 1, 1986, on-farm grain stocks survey will be conducted in conjunction with the end-of-season crop acreage and production survey. This is the first of a number of steps to improve crop survey methodology. The April 1, 1987, grain stocks survey, including rice, and the February 1 prospective plantings survey will be changed to March 1 with a report in late March 1987. A historical 10-year data series of U.S. totals will be published for each of the new report dates to assist data users in shifting data bases to the new report schedule.

Comments from data users regarding the proposed changes should be addressed to Richard D. Allen, Director, Estimates Division, Room 5847–S, SRS/USDA, Washington, DC 20250. The comment period will close February 24, 1986.

Done at Washington, DC this 31 day of January 1986.

W.E. Kibler,

Administrator.

[FR Doc. 86–2751 Filed 2–6–86; 8:45 am]

BILLING CODE 3410-20-M

COMMISSION ON CIVIL RIGHTS

New Hampshire Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on March 6, 1986, at McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to continue FY '86 project planning. Special attention will be paid to the proposed project "Access to Voter Registration and Polling Sites by New Hampshire's Elderly and Disabled.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert A. Wells, or Jake Schlitt, Director of the New England Regional Office at (617)223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 31, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-2749 Filed 2-6-86; 8:45 am]

BILLING CODE 6635-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Review on Certain Brass Plated Steel Wire; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to small diameter, brass plated steel wire (tire bead wire) used in the reinforcement of automotive tires.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3709, (202) 377-1102.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category . . ."

We have received a short supply request for high carbon, brass plated steel wire meeting the following specifications:

Diameter: 1.55 millimeter, +/−0.03 millimeter.

Copper Coating: 0.28 gram, +/−0.10 gram per 1 kilogram of wire.

Tin Content: 12 percent, +/−5 percent.

Tensile Strength: Minimum 310 kilograms.

Elongation: Minimum 2.75 percent.

This product is used in the reinforcement of automotive tires.

Parties interested in commenting on any of these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: February 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration

[FR Doc. 86-2727 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Senior Executive Service; Membership of General and Limited Performance Review Boards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the purpose of the National Bureau of Standards (NBS) General and Limited Performance Review Boards, changes in the membership of those Boards, and the terms of appointment of its members.

SUPPLEMENTARY INFORMATION: The purpose of the General Performance Review Board (GPRB) is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related material, and to make appropriate recommendations to the Director of NBS as the Appointing Authority for the Senior Executive Service at NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives and the organizations of which they are members and instill in the minds of such senior executives confidence in the integrity, competence and impartiality of the GPRB. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The purpose of the Limited Performance Review Board (LPRB) is the same as the GPRB. However, the LPRB performs its review functions for all NBS senior executives who are members of the NBS Executive Board (except the NBS Deputy Director) and those senior executives who are members of the NBS GPRB.

The individuals who have been newly appointed by the Director of NBS to membership on the GPRB and LPRB or have had their term of membership extended and the term of their appointment or extension are listed below.

GPRB

Dr. Lewis H. Nosanow, Director, Division of Materials Research, National Science Foundation, Washington, D.C. 20550, Term: January 1, 1986 to December 31, 1987

Dr. Theodore E. Madey, Group Leader, Surface Structure and Kinetics, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Term: January 1, 1986 to December 31, 1987

Dr. James E. Hill, Chief, Building Equipment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Term: January 1, 1986 to December 31, 1987

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899, Term extended to December 31, 1986

LPRB

Dr. Jeffery D. Rosendhal, Assistant Associate Administrator (Science), National Aeronautics and Space Administration, Washington, D.C. 20546, Term: January 1, 1986 to December 31, 1987.

The full membership and expiration dates of the GPRB and the LPRB as now constituted, including the changes made by this notice, are set out below.

GPRB

Dr. Howard E. Sorrows, Chair, Director, Office of Research and Technology

Applications, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. James E. Hill, Chief, Building Equipment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1987

Dr. Theodore E. Madey, Group Leader, Surface Structure and Kinetics, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1987

Mr. Charles K.S. Miller, Chief, Electromagnetic Fields Division, National Bureau of Standards, Boulder, Colorado 80303, Expiration of appointment—December 31, 1986

Dr. Lewis H. Nosanow, Director, Division of Materials Research, National Science Foundation, Washington, D.C. 20550, Expiration of appointment—December 31, 1987

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute of Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. Robb M. Thomson, Senior Scientist, Institute for Materials Science and Engineering, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

LPRB

Dr. Edward L. Brady, Chair, Associate Director for International Affairs, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator (Science), National Aeronautics and Space Administration, Washington, D.C. 20546, Expiration of appointment—December 31, 1987

Dr. Donald K. Stevens, Deputy Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, D.C. 20545, Expiration of appointment—December 31, 1986

FOR FURTHER INFORMATION CONTACT:

Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland 20899 (301) 921–3555.

Dated: February 3, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–2675 Filed 2–6–86; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Colombia

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia, the United States has decided to control imports of man-made fiber shirts in Category 640, produced or manufactured in Colombia and exported during the twelve-month period which began on July 1, 1985, and extends through June 30, 1986. The letter to the Commissioner of Customs which follows this notice establishes the import level for this category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 6, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 4, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter amends, but does not cancel, the letter of June 27, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period began on July 1, 1985, and extends through June 30, 1986.

Effective on February 10, 1986, the letter of June 27, 1985, is hereby amended to include a restraint level of 29,167 dozen [1] for man-made fiber textile products in Category 640.

Textile products in Category 640 which have been exported to the United States prior to June 1, 1985, shall not be subject to this directive.

Textile products in Category 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–2722 Filed 2–6–86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and Mexico have exchanged notes further amending and extending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979 for six months beginning on January 1, 1986 and extending through June 30, 1986. The bilateral agreement, as further amended and extended, establishes specific limits for Categories 338/339, 347/348, 359pt. (cotton coveralls in T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928, and 384.5227), 633, 641, 647/648 and 659pt. (man-made fiber coveralls in T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8605, and 384.9310). In addition, the agreement provides consultation levels for cotton,

[1] The levels has not been adjusted to reflect any imports exported after June 30, 1985. Charges during the period July 1, 1985, through November 30, 1985, have amounted to 14,744 dozen.

wool and man-made fiber textiles and textile products in Categories 300/301, 331, 334, 335, 336, 337, 340, 341, 352, 359pt. (apparel other than coveralls), 363, 433, 434, 435, 442, 447, 448, 604, 634, 635, 636, 637, 638/639, 640, 642, 644, 645, 646, 649, 650, 651, 652, 659pt. (headwear in T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650) and 659pt. (all T.S.U.S.A. numbers in the category except those previously specified for headwear and coveralls), which are not subject to specific limits and which may be adjusted during the agreement year upon agreement between the two governments. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, in the United States of textiles and textile products in the foregoing categories, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 4, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as further amended and extended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 10, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the six-month period which began on Janaury 1, 1986 and extends through June 30, 1986, in excess of the following limits:

Category	6-month limit[1] [4]
300/301	4,00,000 pounds.
331	285,715 dozen pairs.
334	12,107 dozen.
335	15,000 dozen.
336	20,000 dozen.
337	14,000 dozen.
338/339	292,747 dozen.
340	62,500 dozen.
341	55,000 dozen.
347/348	570,000 dozen of which not more than 312,500 dozen shall be in Category 347 and not more than 312,500 dozen shall be in Category 348.
352	90,909 dozen.
359pt.[2]	500,000 pounds.
359pt.[3]	106,696 pounds.
363	2,000,000 numbers.
433	5,000 dozen.
434	1,158 dozen.
435	7,408 dozen.
442	4,000 dozen.
447	4,500 dozen.
448	2,778 dozen.
604	1,250,000 pounds of which not more than 375,000 pounds shall be in T.S.U.S.A. number 310.5049.
633	37,500 dozen.
634	50,000 dozen.
635	50,000 dozen.
636	50,000 dozen.
637	22,500 dozen.
638/639	450,000 dozen of which not more than 300,000 dozen shall be in Category 638 and not more than 300,000 dozen shall be in Category 639.
640	100,000 dozen.
641	212,500 dozen.
642	56,180 dozen.
644	18,519 dozen.
645	15,000 dozen.
646	9,511 dozen.
647/648	750,000 dozen of which not more than 400,000 dozen shall be in Category 647 and not more than 400,000 dozen shall be in Category 648.
649	1,000,000 dozen.
650	6,863 dozen.
651	50,000 dozen.
652	375,000 dozen.
569pt [5]	500,000 pounds.
659pt. [6]	125,000 pounds.
659pt. [7]	600,000 pounds.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

[2] In Category 359, only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5227.

[3] In Category 359, all T.S.U.S.A. numbers in the category except those listed in footnote 2.

[4] See footnote 1.

[5] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8605 and 384.9310.

[6] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650.

[7] In Category 659, all T.S.U.S.A numbers in the category except those listed in footnotes 5 and 6

In carrying out this directive, entries of cotton and man-made fiber textile products in the foregoing categories, except Categories 300/301, 331, 334, 337, 352, 359pt.[8], 359pt.[9], 363, 434, 435, 448, 636, 640, 642, 644, 646, 650, 651, 652, 659pt.[5], 659pt.[6], and 659pt.[7], produced or manufactured in Mexico, which have been exported during the period which began on January 1, 1985 and extended through December 31, 1985, shall to the extent of any unfilled balances, be charged against the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive. Textile products in Categories 300/301, 331 334, 337, 352, 359pt.[10], 359pt.[11], 363, 434, 435, 448, 636, 640, 642, 644, 646, 650, 651, 652, 659pt.[12], 659pt.[13], and 659pt.[14], which have been exported before January 1, 1986, shall not be subject to this directive.

The limits set forth above are subject to adjustment in the further according to the provisions of the bilateral agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 7 percent for swing in any agreement period; (2) these same limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in term of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)

[8] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8605 and 384.9310.

[9] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640., and 703.1650.

[10] In Category 659, all T.S.U.S.A. numbers in the category except those listed in footnotes 5 and 6.

[11] See footnote 2.

[12] See footnote 3.

[13] See footnote 5.

[14] see footnote 6.

[15] See footnote 7.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2725 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

A CITA directive establishing import limits for specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986, was published in the **Federal Register** on May 29, 1985 (50 FR 21923). The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka provides, among other things, for the carryover of shortfalls in certain categories from the previous agreement year. Accordingly, at the request of the Government of Sri Lanks, carryover is being applied to the current-year limits for cotton, wool and man-made fiber textile products in Categories 334, 336, 339, 369 pt. (shop towels in T.S.U.S.A. number 366.2840-formerly 366.2740), 445/446, 631, 634, 635, 640, 641, 645/646, including the sublimit for Category 646 and 648. The limits for Categories 634 and 635 have also been adjusted to account for shift previously applied. The limit for Category 347 is being adjusted to account for unused carryforward in the amount of 12,543 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 4, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 29, 1985, as amended, from the Chairman of the Committee for the Inplementation of Textile Agreements which established levels of restraint for certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986.

Effective on February 10, 1986, the directive of May 29, 1985 is hereby amended to adjust the previously established restraint limits for the following categories to the indicated amounts under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983:[1]

Category	Adjusted 12-mo restraint limits[1]
334	191,892 dozen.
336	70,596 dozen.
339	444,002 dozen.
347	362,804 dozen.
369 pt.[2]	900,107 pounds.
445/446	97,553 dozen.
631	310,190 dozen.
634	116,086 dozen.
635	178,291 dozen.
640	102,077 dozen.
641	532,460 dozen.
645/646	112,248 dozen of which not more than 74,566 dozen shall be in Category 646.
648	170,454 dozen.

[1] The levels have not been adjusted to account for any imports exported after May 31, 1985.

[2] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2723 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Agreement provides, in part, that (1) specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward.

Increasing Import Levels for Certain Cotton, Wool and Man-Made Fiber Products Produced or Manufactured in Colombia

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia provides for percentage increases in certain limits during an agreement year (swing) and for the carryover of shortfalls from the previous agreement period (carryover). Under the terms of the bilateral agreement, the restraint limits previously established for textile products in Categories 313, 435, 442, 444, and 448 are being increased, variously, for swing and carryover for the agreement year which began on July 1, 1985 and extends through June 30, 1986. The limits for Categories 443, 444 and 641 also include adjustment for growth for the current agreement year. The limit for Category 435 also includes an adjustment in the base to account for the conversion of a minimum consultation level to a specific limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754) November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile agreements.

Committee for the Implementation of Textile Agreements

February 4, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On October 29, 1985, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on July 1, 1986 and extending through June 10, 1986, produced or manufactured in Colombia, in excess of designated restraint limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on February 10, 1986, the directive of October 29, 1985 is hereby amended to include the following adjusted restraint limits for textile products in Categories 313, 435, 442, 443, 444, 448 and 641:

Category	Adjusted 12-month limit [2]
313	16,078,670 square yards.
435	7,692 dozen.
442	9,467 dozen.
443	12,229 dozen.
444	5,244 dozen.
448	8,284 dozen.
641	213,292 dozen.

[2] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2721 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, between the Governments of the United States and Colombia which provide, in part that: (1) Within the applicable group limits, specific limits may be exceeded by designated percentages; (2) specific limits may be increased for carryforward; (3) certain consultation levels may be increased within the applicable group limit upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Background

On May 29, 1985, a notice was published in the **Federal Register** (50 FR 21923) announcing the import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the agreement year which began on June 1, 1985 and extends through May 31, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 10, 1983, the Governments of the United States and Sri Lanka have agreed to establish specific limits for the following categories of cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986: Cotton playsuits in Category 337, men's and boys' cotton knit shirts in Category 338, women's, girls' and infants' knit shirts in Category 339, cotton terry and other pile towels in Category 363, cotton shop towels in Category 369 (only T.S.U.S.A. number (366.2840–formerly 366.2740) and men's and boys' trousers in Category 647.

The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry or withdrawal from warehouse for consumption, in the United States of textile products in the foregoing categories in excess of the designated restraint limits. The limits for Categories 338 and 647 have been prorated for the period July 30, 1985 through May 31, 1986. The limit for Category 363 has been prorated for the period August 26, 1985 through May 31, 1986.

The agreed limits for the foregoing categories have not been adjusted to account for any charges for imports exported during the restraint periods which end on May 31, 1986. Such charges will be made to these limits as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

February 4, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directive of May 24, 1985 which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton textile products produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986.

Effective on February 10, 1986, the directive of May 24, 1985 is hereby further amended to include an adjusted limit of 400,002 dozen for cotton textile products in Category 339 and the following new twelve-month limits for cotton textile products in Categories 337 and 369pt.[1]:

Category	12-month limit [2]
337	106,000 dozen.
369 pt.[1]	846,940 pounds.

[1] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).
[2] The limits have not been adjusted to account for any import exported after May 31, 1985.

Textile products in Categories 337 and 369 pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 10, 1983 between the Governments of the United States and Sri Lanka; and in accordance with the provision of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 10, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338, 363, and 647, produced or manufactured in Sri Lanka and exported during the indicated periods, in excess of the following limits:

Category	Prorated 12 month restraint limit [2]	Period
338	194,499 dozen.	July 30, 1985–May 31, 1986.

[1] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

Category	Prorated 12 month restraint limit [1]	Period
363	4,586,301 numbers.	Aug. 26, 1985-May 31, 1986.
647	297,616 dozen.	July 30, 1985-May 31, 1986.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1985.

In carrying out this directive textile products in the foregoing categories, except Categories 338, 363 and 647, which have been exported during the agreement periods which ended on May 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the restraint limits established for such goods during those periods have been exhausted by previous entires, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 338, 363 and 647 which have been exported prior to July 30, 1985 in the case of Categories 338 and 647 and prior to August 26, 1985 in the case of Category 363 shall not be subject to this directive.

Textile products in Categories 338, 363 and 647 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

All of the restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limit and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any of the adjustments referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2724 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations on Man-Made Fiber Specialty Fabrics in Category 627, Produced or Manufactured in Taiwan

February 4, 1986.

On December 30, 1985, the American Institute in Taiwan (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of man-made fiber specialty fabrics in Category 627, produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber products in Category 627, produced or manufactured in Taiwan and exported to the United States.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2726 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1986 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 7, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 2 and November 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 31407 and 50 FR 47245) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.5.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1986:

Commissary Shelf Stocking and Custodial, Hickam Air Force Base, Hawaii.

Janitorial/Custodial, All Family Housing Units and Buildings, 672, 1001, 2004, 2033, 2034, 2042, 2044, 2048, 2076, 2077, 2082, 2085, 2100, 2121, 3041, 3074, 3094, 3100, 3104, 3169, 3228, 3250, 3252, 3255, 3301, 3307, 3400, 4320, 24003, 24164 and 24165.
U.S. Marine Corps, MCDEC, Quantico, Virginia.

C. W. Fletcher,
Executive Director.
[FR Doc. 86-2737 Filed 2-6-86; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments Must be Received on or Before: March 12, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons and opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Belt, Aircraft Safety, 1680-00-407-5335.
Cushion, Seat Back, 2540-01-065-6289.
Curtain, Shower, 7230-00-849-9838, 7230-00-849-9839.

Services

Commissary Shelf Stocking, Branch Commissary Store, Little Creek Naval Amphibious Base, Building 3324, Norfolk, VA.
Commissary Shelf Stocking, Branch Commissary Store, Building 350, Norfolk Naval Shipyard, Portsmouth, VA.
Commissary Shelf Stocking and Custodial, Fort Irwin, IL.
Commissary Shelf Stocking and Custodial, Rock Island Commissary, Rock Island, IL.
Commissary Shelf Stocking and Custodial, Seneca Army Depot, NY.
Commissary Shelf Stocking and Custodial, Fort Sill, OK.
Commissary Shelf Stocking and Custodial, Carlisle Barracks, PA.
Commissary Shelf Stocking and Custodial, Tobyhanna Army Depot, PA.
Commissary Shelf Stocking and Custodial, Commissary and Commissary Annex, Fort Bliss, TX.
Operation of the Postal Service Center, Barksdale Air Force Base, LA.

C.W. Fletcher,
Executive Director.
[FR Doc. 86-2738 Filed 2-6-86; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been rescheduled from January 31, 1986 as follows:

DATE: 5 March 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Activities.

Linda M. Lawson,
Alternate OSD Fedeal Register Liaison Officer, Department of Defense.
February 4, 1986.
[FR Doc. 86-2752 Filed 2-6-86; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Software; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 4-5 March 1986 at the MITRE COMPLEX, 1820 Dolley Madison Blvd, McLean, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. The March meeting will consist of discussion by the Task Force members on various software issues.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, approximately one week prior to the scheduled meeting times. Space is limited and will be awarded on a first come first served basis. Telephone (202) 695-7181.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
February 4, 1986.
[FR Doc. 86-2753 Filed 2-6-86; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingua' Education; Meeting Cancellation

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of Meeting Cancellation

SUMMARY: This notice cancels the NACCBE meeting scheduled for February 10-11, 1986, published in the December 18, 1985 **Federal Register** on page 51577.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202 (202) 245-2600.

Dated: February 4, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-2699 Filed 2-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: 9(i)(3)-86]

Proposed Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act; Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for comments.

SUMMARY: Bonneville Power Administration (BPA) proposes to interpret section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839f(i)(3). Section 9(i)(3) imposes an obligation upon the BPA Administrator, to the extend practicable, to give priority to marketing services for capability from projects under construction on the effective date of the Northwest Power Act if the capability has been offered for sale to BPA at cost, including a reasonable rate of return, and the offer is not accepted within one year. The proposed legal interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's power marketing program.

Responsible Officials: James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. Thomas M. Noguchi, Director, Division of Customer Service, is the official responsible for implementing section 9(i)(3).

DATE: Written comments on the proposed interpretation of section 9(i)(3) will be accepted until 5 P.M., P.S.T., February 21, 1986.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the above address, 503-230-3478. Oregon callers outside Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3860.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington, 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla Washington 99362, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208-334-9138.

SUPPLEMENTARY INFORMATION:

I. Background

A. Need for Legal Interpretation

BPA needs to interpret section 9(i)(3) because it has received an offer of project capability under the terms of section 9(i)(3). In addition, the section 9(i)(3) priority affects the implementation of BPA's power marketing program and policies, such as the Intertie Access Policy.

B. Relevant Statutory Provisions

Section 9(i)(1) of the Northwest Power Act, 16 U.S.C. 839f(i)(1), imposes an obligation on the BPA Administrator, to the extent practicable, to acquire electric power required by certain customers as replacement power and to dispose or assist in the disposal of power that certain customers propose to sell, if such disposition does not conflict with the Administrator's other marketing obligations, the policies of the Northwest Power Act, and other applicable laws. Section 9(i)(2) of the Act, 16 U.S.C. 839f(i)(2), authorizes the BPA Administrator to prescribe policies and conditions for the independent acquisition or disposition of electric power by direct service industrial customers. Section 9(i)(3) provides:

> The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year. 16 U.S.C. 839f(i)(3).

C. Scope of Interpretation

This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's power marketing program. This interpretation is not intended to address other legal issues or policy questions which may involve section 9(i)(3). This interpretation is not an invitation to the public to provide comment on the substance or merits of any other BPA policies or rate proceedings under consideration and public comment at this time.

D. Public Comment Procedures

All comments should be directed to the Public Involvement Manager at P.O. Box 12999, Portland, Oregon 97212. Written comments must be received in the Public Involvement Office by 5 p.m., P.S.T., on February 21, 1985. BPA will develop its final interpretation based in part on the written comments received. The final interpretation will be published in the Federal Register in March of 1986.

II. Proposed Legal Interpretation

A. Definitions

This section contains definitions of terms used in the proposed legal interpretation and is a part of the interpretation. Terms defined in the Northwest Power Act have the same meaning in this interpretation, unless further defined.

1. *Project capability:* "Project capability" is the actual or planned

electric power capability of a generating facility. Project capability is not output or plant ownership.

2. *Under construction:* A project is "under construction" if BPA determines there was a firm commitment to build and operate a generating facility. This commitment may, but not necessarily, be evidenced by binding contracts for the purchase of generation equipment or machinery, site development, or construction placement, including foundation work, fabrication, or equipment installation.

3. *Offered for sale:* Project capability is "offered for sale" if there is a bona fide offer, capable of acceptance and valid for one year, which includes, but is not limited to, the following essential terms: (a) Identification of project capability offered pursuant to section 6 of the Northwest Power Act; (b) the cost of the capability offered; (c) the quantity of capability offered; (d) the term of the proposed sale; (e) identification of the manner of acceptance; and (f) designation of the point of delivery from which BPA can take delivery of the power into its system.

4. *At cost, including a reasonable rate of return:* Under section 9(i)(3), project capability must be offered for sale to BPA "at cost, including a reasonable rate of return." This price reflects the costs determined by BPA to be associated with the project capability. In any decision to acquire project capability, BPA shall determine the appropriateness of the costs and the reasonableness of the rate of return included in the offered price.

5. *Power marketing program:* BPA's "power marketing program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's power marketing program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's power marketing program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Northwest Power Act and to assist in the marketing of the region's surplus firm power to the Southwest.

B. Interpretation

Project capability which qualifies for the section 9(i)(3) priority is generating capability of a Pacific Northwest utility customer of BPA; from a project located within or without the Pacific Northwest, which was under construction by such customer on December 5, 1980; was offered for sale to BPA at cost, including a reasonable rate of return; and the offer of which has been rejected by BPA, or has not been accepted by BPA within one year from the date of the offer. Such project capability shall have priority to all transmission, storage, and loan factoring services, at established rates or charges, which BPA is making available to other utility customers under policies and programs in effect at the time the offer is rejected or allowed to lapse and for which the project capability otherwise qualifies.

Section 9(i)(3), however, does not confer independently and substantive right to, or any modification of, BPA's power marketing program for the reason that the statute grants only a priority to the services as BPA may offer. In this regard, section 9(i)(3) implicitly recognizes that the type and amount of services BPA provides are separate questions to be addressed in BPA's power marketing program which establishes transmission, storage, and load factoring services.

Priority shall be provided to the extent practicable, unless BPA determines that such services cannot be furnished without substantial interference with BPA's power marketing program, applicable operating limitations, or existing contractual obligations. In the event that there are competing requests for such services, the section 9(i)(3) project capability shall have priority; however, BPA shall not breach existing contracts to provide services.

Issued in Portland, Oregon on February 4, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

[FR Doc. 86-2901 Filed 2-5-86; 4:59 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-015; OFP Case No. 61050-9275-21, 22-22]

Powerplant and Industrial Fuel Use; Alaska Electric Generation & Transmission Cooperative

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Extension of Decision Period on Petition for Exemption by Alaska Electric Generation and Transmission Cooperative, Inc., near The Seward Meridian, Alaska.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days to April 14, 1986, the Decision Period within which to either grant or deny the request for a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA) filed by Alaska Electric Generation and Transmission Cooperative for two proposed 80 MW gas turbine powerplants to be located west of The Seward Meridian, Alaska.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a date certain by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary due to required analysis of additional environmental data submitted by the petitioner during December, 1985.

Issued in Washington, D.C. on January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2713 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-01; OFP Case No. 61056-9296-20-24]

Powerplant and Industrial Fuel Use; Prohibition Orders; Basic American Foods

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Basic American Foods Exemption from Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Basic American Foods (Basic or "the petitioner"), of San Francisco, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a planned American I cogeneration project located in King City, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 8, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–6233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will be a gas turbine combined cycle plant designed to produce process steam for use in the existing Basic food processing plant and electricity for sale to the Pacific Gas and Electric Company. Approximately 87 MW of electricity will be generated by a single gas turbine-generator. Heat rejected with the gas turbine exhaust gas will be recovered in a heat recovery steam generator. The steam produced will be passed through a steam turbine-generator producing a variable amount of additional electricity. Process steam for use in the vegetable processing plant will be extracted from an intermediate stage in the steam turbine at a maximum rate of approximately 201,500 lb/hr.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Basic's certification to ERA, in accordance with § 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 15, 1985 (50 FR 47251), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 30, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Basic has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Basic to permit the use of natural gas as the primary energy source for its cogeneration facility in King City, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 29, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–2720 Filed 2–6–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–018; OFP Case No. 55034–9279–01, 02–33]

Powerplant and Industrial Fuel Use; Prohibition Orders; Boise Cascade Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Boise Cascade Corporation Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Boise Cascade Corporation a permanent emergency purposes exemption from the prohibitions of the Powerplant and Industrial Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA") or "the Act") for two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana. The exemption granted permits the use of natural gas as the primary energy source for the emergency standby units.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on April 8, 1986.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or

petroleum in new MFBIs that consist of a boiler unless an exemption for such use has been granted by ERA. Boise Cascade Corporation has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

The proposed gas-fired units are rated at 165,000 pounds per hour (lb/hr) of steam each at 900 psig. Because the heat input into each unit, about 228 million Btu's per hour (MMBtu/hr), would exceed 100 MMBtu/hr, each proposed boiler would be an MFBI subject to FUA regulation. The proposed boilers are to be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down. The proposed boilers would operate a potential 409 hours per year. Their required fuel would be natural gas. It is economically nonfeasible to install coal or other mixtures boilers for standby emergency purposes.

Basis for Exemption Order

The permanent exemption granted by ERA to the new boilers is based upon Boise Cascade Corporation's certification, pursuant to section 212(e) of FUA and 10 CFR 503.39(a), that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Boise Cascade Corporation has included as part of its petition:

1. Exhibits containing the basis for the certifications described above, and

2. Environmental certifications, as required under 10 CFR 503.13(b).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of certification relating to the proposed units in the **Federal Register** on August 21, 1985 (50 FR 33823), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on October 4, 1985. No comments were received and no hearing was requested.

Order Granting Permanent Emergency Purposes Exemption

Based upon the entire record of this proceeding, ERA has determined that Boise Cascade Corporation has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.39(a). Therefore, pursuant to section 212(e) of FUA, ERA hereby grants a permanent emergency purposes exemption to Boise Cascade Corporation to permit the use of natural gas as the primary energy source for its two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2714 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-29; OFP Case No. 64013-9311-20, 21-24]

Powerplant and Industrial Fuel Use; Prohibition Orders; Kern Front CoGen, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Kern Front CoGen, Inc.

SUMMARY: On January 17, 1986, Kern Front CoGen, Inc. (Kern Front CoGen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their proposed Kern Front Project from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301, *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTAL INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 24, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-29 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Division of Coal & Electricity, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: Kern Front CoGen plans to install a 47 MW gas fired cogeneration facility to produce steam and electric power. The cogeneration system of the facility, will consist of two combustion gas turbine generators and two unfired heat recovery boilers. The only fuel burning equipment in the facility will be the gas turbines. The facility will consume 432 million Btu's of natural gas per hour and produce 46.0 MW of electric power and 113,000 pounds per hour of steam. The steam will be sold to the Petro-Lewis Corporation, and the electric power to the Pacific Gas and Electric Company.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Kern Front CoGen has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Kern Front CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Kern Front CoGen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2719 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-04; OFP Case No. 52164-2952-21, 22, 23, 24-22]

Powerplant and Industrial Fuel Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Muskogee generating station (Muskogee), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 3801 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981)

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 250.7 MW. Three of the turbines will have electrical design peak mode outputs of approximately 82.6 MW with the smaller unit having an output of 39.7 MW. Using a site elevation of 600 feet and assuming a 88° F inlet temperature the total peakload fuel consumed by the four units using natural gas is estimated to be 2,745.2 million Btu per hour, and on No. 2 distillate oil 2,720.6 million Btu per hour. They will be able to burn either natural gas or petroleum as a primary energy source. The proposed units are to be installed at the OG&E's Muskogee facility, an 800 acre site adjacent to the Arkansas River, south of U.S. Highway 62.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Muskogee a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Muskogee facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48461), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E

petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Muskogee, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2715 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-03; OFP Case No. 52164-2951-21,22,23,24-22]

Powerplant and Industrial Fuel Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Horseshoe Lake generating station (Horseshoe Lake), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and neutral gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at the OG&E's Horseshoe Lake facility, a site of approximately 900 acres. It is located on the north bank of the North Canadian River, at a point about one mile north of U.S. Highway 62 and one mile west of Harrah, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Horseshoe Lake a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request for DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Horseshoe Lake facility' simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d) ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48460), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public

hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41 (a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Harrah, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2716 Filed 2-6-86; 8:45 am]

BILLING CODE 5450-01-M

[Docket No. ERA-C&E-86-02; OFP Case No. 52164-2956-22,23,24,25-22]

Powerplant and Industrial Fuel Use; Prohibition Orders, Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Seminole generating station (Seminole), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.5 MW. Using a site elevation of 1,000 feet and assuming a 88°F inlet temperature the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. They will be able to burn either natural gas or petroleum as a primary energy source. The proposed units are to be installed at the OG&E's Seminole facility, a 3,300 acre site adjacent to the South Canadian River about two miles northeast of Konawa, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Seminole a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Seminole facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48463), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the request exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Konawa, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2717 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-06; [OFP Case No. 52164-2953-22, 23, 24, 25-22]

Powerplant and Industrial Fuel Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Mustang generating station (Mustang), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at the OG&E's Mustang facility, a site of approximately 355 acres. It is located on the west bank of the North Canadian River, at a point about one half mile south of State Highway 4. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Mustang a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Mustang facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48462), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternative fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a to a

concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility located on the west bank of the North Canadian River permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2718 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TA86-6-20-002, TA86-7-20-002, and TA86-8-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Algonquin Gas Tranmission Company ("Algonquin Gas") on January 28, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No.1.

Substitute Tenth Revised Sheet No. 203
Seventh Revised Sheet No. 204
Substitute Ninetenth Revised Sheet No. 213
Substitute Twentieth Revised Sheet No. 213

Algonquin Gas states that Sheet No. 203 and Sheets 213 are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS, a 3 cent/dekatherm reduction in the non-gas commodity component of Consolidated Gas Transmission Corporation's ("Consolidated") underlying rates. Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3 a 92 cent/dekatherm reduction in the demand charge for firm transportation by Transcontinental Gas Pipe Line Corporation ("Transco").

Algonquin Gas requests that the Commission accept Substitute Tenth Revised Sheet No. 203 and Substitute Nineteenth Revised Sheet No. 213 to be effective Janaury 1, 1986; and that the Commission accept Seventh Revised Sheet No. 204 and Substitute Twentieth Revised Sheet No. 213 to be effective February 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2702 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-9-20-000, 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 28, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Eleventh Revised Sheet No. 201
Sixth Revised Sheet No. 231
Fifth Revised Sheet No. 241

Algonquin Gas states that such tariff sheets are being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision as set forth in section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The rates as shown on Eleventh Revised Sheet No. 201 reflect (i) and adjustment to amortize the December 31, 1985 balance in Algonquin Gas' Unrecovered Purchased Gas Cost Account (Account No. 191) and (ii) an adjustment to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). Sixth Revised Sheet No. 231 reflects Projected Incremental Pricing Surcharges for the period March, 1986 through August, 1986. Fifth Revised Sheet No. 241 identifies the gas cost included in the revised sales rates.

Algonquin Gas proposes the effective date of the above-mentioned tariff sheets to be March 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2701 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-41-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that on January 29, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed proposed changes in its FERC Gas Tariff, pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin Gas propose that the filing take effect on March 1, 1986.

Algonquin states that the filing would effectuate an increase in annual revenues of approximately $9.9 million or 1.7%. The Company asserts that the increased rates are required to provide revenues equal to the test period cost of service, when applied to the related test period deliveries. The increased rates are filed to become effective March 1, 1986.

Algonquin Gas states that copies of its filing have been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2700 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-21-000, 001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 3, 1986

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1986, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1986:

One hundred and fourth Revise Sheet No. 16
Eighth Revised Sheet Nos. 16B and 16C
Fortieth Revised Sheet No. 64

Columbia states that the filing reflects only demand charges consistent with the Stipulation and Agreement in Docket Nos. TA82-1-21-001, *et al.*, approved by Commission's order dated June 14, 1985, as modified by order dated June 25, 1985.

Columbia further states that the rates set forth on One hundred and forth Revised Sheet No. 16 reflect a $.377/Dth reduction in the Demand Rate Applicable to Non-Shielded Customers and a $.333/Dth reduction in the Demand Rate Applicable to Shielded Customers, which results in an approximate decrease of $10.8 million applicable to sales rate schedules for the subject PGA period. This reduction is composed of the net of (1) a Demand Purchased Gas Cost Adjustment which reflects a reduction in the current cost of gas, and (2) a net increase in the Demand Surcharge Adjustment.

In addition, the Demand Purchased Gas Cost Surcharge amounts set forth on Eighth Revised Sheet No. 16B provide for the recovery of $19,865 in demand gas purchased costs from customers receiving service under Columbia's Rate Schedule SGES.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2703 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-76-000]

Commonwealth Edison Co.; Order Summarily Rejecting Filing in Part and Ordering New Filing, Granting Waiver, Granting Interventions, Denying Motion to Consolidate, and Establishing Hearing Procedures

Issued: January 30, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On November 4, 1985, Commonwealth Edison Company (Edison) filed a proposed rate for transmission service (Rate 80) to the City of Geneva, Illinois (Geneva).[1] The rate was filed as a result of a settlement approved by the Commission in Docket No. ER83-437-000.[2] Geneva presently receives full requirements service from Edison. Under the terms of the settlement agreement, Geneva and Edison's other full requirements customers may obtain transmission and/or partial requirements service upon one year's notice. In that event, Edison is required to file a rate for the service requested no later than 180 days prior to termination of full requirements service. As discussed more fully below, commencing in June 1984, Geneva began exploring alternative power purchase options and ultimately entered into a full requirements power supply agreement with Wisconsin Electric Power Company (WEPCO). As a result, on May 1, 1985, Geneva gave Edison notice of its intent to terminate full requirements service on May 1, 1986. Accordingly, Edison has submitted this filing. Edison proposes an April 30, 1986 effective date for Rate 80 and requests waiver of the advance filing requirements. The company has characterized its filing as an initial rate.

Notice of Edison's filing was published in the **Federal Register**,[3] with comments due on or before November 22, 1985. Timely motions to intervene were filed, jointly, by Geneva and the City of Rock Falls, Illinois (Rock Falls), and by the Illinois Municipal Electric Agency (IMEA).[4] In addition, an untimely motion to intervene was filed by the Illinois Commerce Commission (ICC).

Geneva, joined by Rock Falls,[5] requests that the Commission: (1) Find that Edison's filing constitutes a change in rate and suspend it for one day; (2) Declare the filing deficient and order Edison to file all information required by section 35.13 of the Commission's regulations, including a cost of service study based on fully distributed embedded costs; (3) Direct the company to place in effect and collect commencing May 1, 1986, on a subject-to-refund basis, a transmission rate based on fully-distributed embedded costs; (4) Summarily reject Edison's proposed stand-by charge and the company's alternative justification for Rate 80; and (5) Set the matter for expedited hearing. In support, the cities allege that Edison's filing is anticompetitive and an unlawful exercise of monopoly power. The cities also contend that the filing is unduly discriminatory when compared to the transmission component of Edison's firm wholesale and retail rates and, thus, will

[1] *See* Attachment for rate schedule designations.

[2] 29 FERC ¶ 61,084 (1984).

[3] 50 FR 47586 (1985).

[4] IMEA is a municipal corporation formed to provide a mechanism by which its members jointly plan, finance, own, and operate facilities for the generation and transmission of electric power and energy. IMEA's members include Geneva and Rock Falls. IMEA anticipates becoming a supplier of power and energy to some of its members, including Geneva, which are located within Edison's service territory.

[5] Rock Falls is a full requirements customer of Edison and a party to the settlement agreement approved in Docket No. ER83-437-000. Rock Falls has served a notice of termination and request for transmission service to commence on July 3, 1986. A filing similar to that at issue here was made for service to Rock Falls in Docket No. ER86-230-000.

result in a price squeeze. With respect to the proposed stand-by charge, Geneva states that it does not want stand-by service, and that it has informed Edison of this in the past. The cities also allege that Edison's filing undercuts the terms of the settlement agreement filed in Docket No. ER83–647–000, in effect rewriting the termination provisions of that agreement. In the event the Commission does not require Edison to file a rate based on fully-distributed costs, the cities request that the hearing be expedited in order to avoid the allegedly anticompetitive effects of the filing.

IMEA seeks rejection of the filing, alleging that Edison has not justified pricing its transmission rate on marginal costs, that it has not justified including generation capacity costs in Rate 80, and that the stand-by facilities charge included in the proposed rate schedule is discriminatory.

The ICC, while requesting intervenor status, does not raise any specific issues in its pleading.

On December 9, 1985, Edison filed a response to the pleadings of Geneva, Rock Falls, and IMEA. While Edison does not object to Geneva's intervention, it does object to Rock Falls' and IMEA's intervention. According to Edison, neither movant has an interest in the outcome of this proceeding. Edison denies that its filing is deficient, contending that it complies with the filing regulations applicable to initial rates. However, Edison volunteers to hold any amounts paid under Rate 80 subject to refund if the Commission decides that a lower rate should be charged. In the event that the Commission determines that Rate 80 is a rate change, Edison asserts that the filing meets the requirements of the exception to the full filing requirements set forth at § 35.13(a)(2)(A) of the Commission's regulations because Rate 80 is allegedly a rate decrease. As to the motions for summary disposition, Edison states that they raise disputed issues of material fact. Finally, Edison requests that the Commission set the matter for hearing on an expedited schedule.

On January 21, 1986, Geneva, Rock Falls, and the Cities of Batavia and Naperville, Illinois (Municipalities) filed a motion to consolidate this docket with Edison's filing in Docket No. ER86–230–000. In support, the Municipalities state that the latter docket, in which they have filed a motion to intervene, concerns a rate schedule providing for transmission service to Rock Falls on rates, terms, and conditions virtually identical to those reflected in this docket.[6] Thus, the Municipalities allege that the two filings present common questions of fact and law, and consolidation would promote economy of resources.

Discussion

Under Rule 214 of the Commission's rules of practice and procedure (18 CFR 285.214), the timely, unopposed motion to intervene of Geneva serves to make it a party to these proceedings. Notwithstanding Edison's opposition to IMEA's and Rock Falls' interventions, we find that good cause exists to grant their motions. We are satisfied that they have expressed interests in the outcome of this proceeding that are not represented by any other party, and that their participation may be in the public interest. Accordingly, we shall grant their motions to intervene. With respect to the ICC, we shall grant its late-filed motion to intervene, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

We shall grant Edison's motion for waiver of the 120-day advance filing limitation contained in §35.3 of our regulations. We note that none of the intervenors objects to the request, and that the timing of Edison's filing is in accordance with the terms of the settlement agreement previously approved by the Commission.

The Commission disagrees with Edison's assertion that its filing constitutes an initial rate. Section 35.1(c) of the regulations [7] states that:

> A rate schedule applicable to a transmission or sale of electric energy which proposes to supersede, supplement, cancel or otherwise change any of the provisions of a rate schedule required to be on file . . . (such as providing for other or additional rates, charges, classifications or services . . .) shall be filed as a change in rate.

Clearly, Edison's filing, by providing for transmission service to its present full requirements customer, constitutes a change in service and a change in rate for that customer, as defined in our regulations, and as interpreted in prior cases. *See Florida Power & Light Co* v. *FERC*, 617 F.2d 809 (D.C. Cir. 1980).

Furthermore, we cannot accept Edison's characterization of its submittal as comprising a rate decrease. While overall revenues from Geneva will certainly decrease as a result of the change in service, the charge for the transmission component of Geneva's service will certainly increase as a result of the change, under any reasonable method of unbundling the current full requirements electricity and transmission service. Thus, as a technical matter, Edison's submittal does not comply with the § 35.13 filing requirements. Nonetheless, given Edison's obligation to make the filing and the city's desire to implement an appropriate transmission rate by May 1, 1986, we shall not reject the filing outright as deficient. Rather, we shall direct the company to submit full cost of service data and testimony in the form of a case-in-chief in order to proceed to hearing.

Having considered the pleadings, the purposes of the prior settlement and the current filing, and the bases advanced by Edison to support its rates, we shall for the reasons stated below, summarily reject the rates filed by Edison and direct the company to develop and file a transmission rate based on Edison's average embedded costs of its transmission system. Should the company wish to pursue Rate 80 as an appropriate rate for the service to which Geneva is entitled under the settlement, it will be permitted to do so at hearing, although such a rate will be allowed to operate only prospectively.

In sorting through the current controversy, we find the 1984 settlement, the circumstances underlying it, and the course of conduct following it to be instructive as to the parties' intent with regard to the availability and cost of transmission service. The settlement in Docket No. ER83–437–000 reflected a comprehensive resolution of rate and price squeeze issues in ongoing Commission proceedings as well as antitrust litigation in the Federal courts. By the terms of the agreement, Edison was to enable any of its wholesale customers to pursue alternative power supply options under reasonable parameters. Implicit in such an arrangement must be an agreement that transmission service will be priced reasonably relative to existing service being provided by the utility.[8]

Although the parties neglected (or declined) to specify the manner in which a transmission rate would be developed, the course of conduct after the settlement leaves no doubt that responsible representatives of the company and the city shared a common

[6] Edison proposes a rate of $8.27/kW for service to Rock Falls, as opposed to the $8.93/kW rate for service to Geneva.

[7] 18 CFR 35.1(c) (1985).

[8] In the event that Edison were to question our assumption of reasonableness, we need only point to the provisions of sections 205 and 206 of Federal Power Act which proscribe *any* rate that fails to meet this standard or which unduly discriminates among customers.

understanding and intent. During the period following the settlement, Geneva, through its Director of Electric Services, corresponded on several occasions with Edison, through its Director of Rates (*See* Exhibits 3–9 to Geneva's motion to intervene and protest).

Geneva requested information from Edison concerning the rates, terms, and conditions under which transmission services would be provided: The information was solicited for the expressed and acknowledged purpose of evaluating the relative economics of dealing with two alternative suppliers—WEPCO and Wisconsin Power & Light Company (WP&L). Edison's consistent response (as indicated in letters appended to Geneva's protest) was that the rates would be "in the range of $25 to $30 per kilowatt-year" and that "this would cover the costs related to Edison's investment in distribution lines which serve Geneva, as well as the transmission system." (Exhibit 4). The company further represented that such information was sufficient to "develop a reasonable estimate of the cost of transmission service." (Exhibit 6). We note that the range provided is equivalent to the average embedded cost of Edison's transmission system. While Geneva was evaluating other supply options, Edison apparently gave not indication whatever that it would ultimately derive a rate based on other than an average embedded cost basis.

It is clear that Geneva relied detrimentally on such representations in finalizing its supply arrangements with WEPCO. However, on the eve of Edison's submittal, long after the WEPCO agreement had been negotiated and Edison had been served with notice of Geneva's intention to convert to transmission service only, the company first evidenced its intention to propose a rate approximately four times the price that had been quoted, *i.e.*, a rate that will effectively preclude the supply switch negotiated by Geneva.

Given this background, we are not evaluating Edison's filing in a vacuum. The course of dealings could perhaps establish a predicate for applying principles of promissory estoppel against Edison and certainly provide a sufficient basis on which to initiate a hearing regarding Edison's rates as well as the anticompetitive scope of its practices. We cannot, however, concur in Edison's conclusion that we must proceed to hearing before initially ruling on the acceptablility of what it characterizes as a marginal cost proposal. Clearly, this Commission is carefully evaluating the appropriateness of marginal cost pricing in various contexts, and we will be receptive to such pricing proposals where circumstances warrant.[9] We must, however, proceed cautiously in this novel area. Here, without intending to discourage any reasonable proposals for implementing marginal cost pricing methodologies, the Commission is compelled to conclude that Edison has not proffered such justification for its shift to the proposed rate as would overcome the filing's clear potential for substantial anticompetitive effects. We are satisfied that, in the circumstances presented, no material findings of fact would prompt the Commission to permit the rate to operate at least before a clear and convincing showing that any justification for the rate outweighs the potential harm to the customer. There is a simple reason for this conclusion. Despite the obvious objective of the parties' settlement to make available viable supply alternatives for the affected customers, the pleadings make clear that the arrangements negotiated by Geneva will necessarily be foreclosed if the proposed rate is placed in effect. Whatever ultimate findings the Commission might make with regard to the merit of Edison's pricing structure or, conversely, its anticompetitive effects, we know at this point that the filing will immediately subject Geneva to an observable prejudice or disadvantage in the power supply market, that will not be remedied through later refunds. Based on all the circumstances, including the support proffered by Edison to date, it simply has not satisfied its burden of proving that its rate proposal is just, reasonable, and otherwise lawful.

Having evaluated the filing, we have similar concerns and shall make a similar finding with respect to Edison's inclusion of a stand-by charge in Rate 80. The pleadings indicate that during the period of time after its request for an estimate for transmission charges and before Edison's submission of Rate 80 for filing, Geneva, on more than one occasion, advised Edison that it only wanted to utilize Edison's transmission service and nothing else. In its motion to intervene, Geneva reiterated that it does not need or want stand-by service. According to Geneva, WEPCO is just as reliable a supplier as Edison. Further, no provision in the settlement agreement seems to contemplate or obligate Geneva to take a stand-by service from Edison. On the other hand, the result of this charge, as presently proposed, will, without question, have the same direct, adverse affect on Geneva's purchase agreement with WEPCO as is discussed above. Again, whether or not we are later able to accept compelling evidence that some compensation is appropriate to account for future supply contingencies, we find that Edison's filing does not now provide such justification for assessing the stand-by charge, as presently constituted, as would be required to overcome the clear potential for undue prejudice, disadvantage, or other anticompetitive harm to the customer. Without more, we cannot conclude that implementation of the charge is in the public interest and we shall order Edison to eliminate the stand-by charge at such time as it refiles its rates.[10] As in the case of the transmission pricing proposal generally, however, we will not foreclose Edison from seeking prospective application of such a charge through a hearing. In the course of such hearing, we expect the presiding judge to evaluate, among other issues, the balance to be struck between Edison's transmission and stand-by charge proposals, on the one hand, and the various anticompetitive issues presented on the other.

Because Geneva has given notice of its intent to terminate full requirements service from Edison and to begin taking service from WEPCO on May 1, 1986, it is clear that a transmission rate must be on file with the Commission. Under the circumstances, we shall reject Edison's proposed transmission rate, insofar as it departs so dramatically from the self-evident intent of the parties at the time of settlement, and insofar as it creates a real, unremediable potential for undue prejudice or other anticompetitive effects. We shall direct the company to file, within thirty (30) days, a rate excluding any stand-by charge and based on average system transmission costs, accompanied by appropriate cost support data. *Cf. Trans Alaska Pipeline Cases*, 436 U.S. 631 (1978). Because Edison has not yet filed this revised rate, we must conclude that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential. Accordingly, we shall suspend Edison's

[9] See Notice of Inquiry, Regulation of Electricity Sales-for-Resale and Transmission Services, 50 FR 23,445 (June 4, 1985) (Phase I); 50 FR 27 604 (July 5, 1985) (Phase II).

[10] Geneva alleges that Edison has included an alternate justification for its proposed $8.93/kw/month charge on the basis that Geneva is required to continue paying, for ten years, the fixed costs of those facilities built to serve Geneva's loads. Geneva also requests that the Commission summarily reject Edison's alternative justification because this charge in effect undermines the settlement by including a ten year termination charge. Since Edison has, in fact, not adopted its alternate cost justification to support its rate, the requested summary disposition appears to be moot.

revised rate, to become effective on May 1, 1986, subject to refund.

With respect to the parties' request that expedited hearing procedures be applied to this proceeding, we shall leave that decision to the discretion of the Chief Administrative Law Judge. *See e.g., Utah Power & Light Co.*, 30 FERC ¶ 61,015 (1985).

As to the Municipalities' motion to consolidate, we believe that the request is premature. The Commission has not yet acted upon Edison's filing in Docket No. ER86–230–000. There should be ample opportunity in that docket to consider any similarities or differences in the issues presented.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors to the extent that it may continue to exist following Edison's submission of revised rates.

The Commission Orders

(A) Rock Falls', IMEA's, and the ICC's motions to intervene are hereby granted, subject to the Commission's rules of practice and procedure.

(B) Edison's request for waiver of the 120-day advance filing requirement is hereby granted.

(C) Edison's proposed rate is summarily rejected and Edison is directed to file, within thirty (30) days of the date of this order, a rate based on its average system transmission costs and excluding a stand-by component.

(D) Edison's transmission rate, as amended by summary disposition in ordering paragraph (C), is accepted for filing and suspended to become effective on May 1, 1986, subject to refund.

(E) All other requests for rejection or summary disposition not specifically granted herein are denied.

(F) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 of thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Edison's rates and charges.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within fifteen (15) days of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule, including the submission of a case-in-chief by Edison. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(H) The Municipalities' motion to consolidate is hereby denied.

(I) Subdocket 000 of Docket No. ER86–76 is hereby terminated. Docket No. ER86–76–001 is assigned to the evidentiary hearing ordered herein.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Stalon concurred with a separate statement to issued later.

Kenneth F. Plumb,

Secretary.

Attachment A—Commonwealth Edison Company Docket No. ER86–76–000 Rate Schedule Designations

Designation	Designation
(1) Original Sheet Nos. 1M, 1N and 1P to FPC Electric Tariff, Original Volume No. 1.	Rate 80.
(2) 2nd Revised Sheet No. 58 to FPC Electric Traiff, Original Volume No. 1.	Blank service Contract for Rate 80.
(3) 4th Revised Sheet No. 59 to FPC Electric Tariff, Original Volume No. 1.	Do.
(4) Service Agreement No. 11 to FPC Electric Tariff, Original Volume No. 1 (Supersedes Service Agreement dated October 2, 1984).	City of Geneva.

[FR Doc. 86–2708 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–572–004]

Utah Power & Light Co.; Amended Compliance Filing

January 31, 1986.

Take notice on January 14, 1986 Utah Power & Light Company tendered for filing its Amended Compliance Report pursuant to the Order of the Commission issued on November 26, 1985. Copies of the filing were served upon Utah Power's resale customers, the affected State Public Service Commissions, and all other parties required to be served.

Utah Power & Light states that the Amended Compliance Report is being filed to correct an error in the refund calculations which was discovered subsequent to the filing of its original report. Adjusted refunds, together with additional interest, have been made to the affected customers.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, on or before February 7, 1986. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2706 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8872–001]

W. A. Vachon and Associates, Inc.; Surrender of Preliminary Permit

January 30, 1986.

Take notice that W. A. Vachon, and Associates, Inc., Permittee for the Welch Brook & Swift River Project No. 8872, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8872 was issued on June 28, 1985, and would have expired on May 31, 1987. The project would have been located on the Welch Brook & Swift River, in Franklin County, Maine.

The Permittee filed the request on January 8, 1986, and the preliminary permit for Project No. 8872 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth, F. Plumb,

Secretary.

[FR Doc. 86–2704 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8873-001]

W.A. Vachon and Associates, Inc.; Surrender of Preliminary Permit

January 30, 1986.

Take notice that W.A. Vachon and Associates, Inc., Permittee for the West Branch of the Swift River Project No. 8873, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8873 was issued on June 28, 1985, and would have expired on May 31, 1987. The project would have been located on the West Branch of the Swift River, in Oxford County, Maine.

The Permittee filed the request on January 8, 1986, and the preliminary permit for Project No. 8873 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2705 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8949-001; 8601-000; 18--001; 8350-000]

Availability of Environmental Assessment and Finding of No Significant Impact; City of Auburn, Merle Jore and Sons

January 30, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
8949-001	North Division Street Dam/Shoe Form Dam.	NY	Oswasco River	City of Auburn	City of Auburn.
			Licenses		
8601-000	Jore	MT	Unnamed tributary to Mollman Creek.	Ronan	Merle Jore and Sons.
18-001	Twin Falls	ID	Snake River	Twin Falls	Idaho Power Co.
8350-000	Littleville	MA	Middle Branch of Westfield River.	Chester and Huntington.	Littleville Power Co.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environment impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2709 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D); RP86-14-003; RP86-15-003]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.; Offer of Settlement

January 31, 1986.

Take notice that on January 31, 1986, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) filed an offer of settlement in the referenced dockets to resolve certain issues raised in the Petition For Emergency Clarification filed jointly by Columbia and Columbia Gulf on December 16, 1985. The settlement provides procedures for allocating the mainline capacity in Columbia Gulf's system through March 31, 1989. The settlement does not allocate capacity on Columbia.

Columbia Gulf would continue to provide transportation in its mainline system according to its present procedures through March 31, 1986. From April 1, 1986 through March 31, 1989, mainline capacity in Columbia Gulf's system would be allocated monthly to Columbia's wholesale customers, end-users, and other parties pursuant to the nomination, allocation and reallocation procedures set forth in the proposed settlement.

Out of the volumes so allocated, Columbia Gulf will provide to Columbia's wholesale customers up to a maximum of 300,000 Dth per day of firm transportation in its mainline system for the one-year period April 1, 1986 through March 31, 1987, and will consider extending the offer past that period.

Columbia and Columbia Gulf state that they are sending a copy of the settlement offer by overnight mail to all parties required to be served under rule 602. Initial comments on the offer of settlement shall be filed on or before February 13, 1986. At a technical conference held in this proceeding on January 24, 1986, the participants agreed that, for their mutual convenience and availability, ten copies of any initial comments would be lodged in the Washington, DC office of Columbia and Columbia Gulf, in addition to the normal service on the Commission and the other participants. Reply comments will be due on or before February 24, 1986.

Copies of the settlement offer are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2707 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2965-8]

Intent To Form an Advisory Committee To Negotiate New Source Performance Standards for Residential Wood Combustion Units

SUMMARY: EPA is considering establishing a new Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate issues leading to a Notice of Proposed Rulemaking on New Source Performance Standards (NSPS) for Residential Wood Combustion (RWC) units, under section 111 of the Clean Air Act, as amended. The Committee would consist of representatives of parties with a

definable stake in the outcome of the proposed rule.

DATE: EPA must receive comments and suggestions by March 10, 1986.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Environmental Protection Agency, Attn: Docket No. A–84–49, 401 M Street, SW., Washington, DC 20460.

Docket No. A–84–49, containing materials relevant to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, 401 M Street SW., Washington, DC. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Chris Kirtz, Director, Regulatory Negotiation Project, U.S.E.P.A. (PM–223), 401 "M" Street SW., Washington, DC 20460, (202) 382–7565.

SUPPLEMENTARY INFORMATION:

Outline of Notice

Outline of Notice

I. Project Background

A. The Concept of Regulatory Negotiation

The increasingly formal nature of the rulemaking process can impede an agency in developing sound regulatory solutions. The traditional rulemaking process of comment and reply can lead to adversarial relationships among participants and little opportunity for the exchange of information and ideas conducive to developing workable solutions.

On February 22, 1983, EPA announced in the **Federal Register**, 48 FR 7494–7495, that it was beginning a project to explore the extent to which negotiations among interested parties could serve as an alternative to its current rulemaking process—an alternative that could better conserve time and resources and minimize costly litigation.

The project's stated purposes are to test:

- The value of developing regulations by negotiation;
- The types of regulations which are most appropriate for negotiated rulemakings; and
- The procedures and circumstances which best foster negotiations.

The project brings together a balanced mix of parties and interests to negotiate at the pre-proposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). EPA intends to use any consensus that is justified and within its statutory authority as the basis of the proposal. Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator for EPA. Individuals representing definable interests in the regulated community, enforcement officials, and other affected stakeholders negotiate on behalf of their constituencies. A neutral facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

EPA is optimistic that this process can produce better regulations, use all parties' time and resources more wisely, and reduce litigation and uncertainty.

B. Negotiations to Date

EPA has already successfully conducted two such regulatory negotiations and has a third well underway. The first involved Nonconformance Penalties under section 206(g) of the Clean Air Act, as amended. In the time allowed, the group achieved consensus on the core issues. This consensus was used as the basis of the proposed rulemaking. The proposal drew only thirteen comments, all from participants supporting the consensus. Six specifically requested that EPA conduct additional negotiations on other proposed regulations. A final rule was issued on August 30, 1985. It has not been challenged legally.

The second involved Emergency Pesticide Exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Again within the time allowed, the group reached full consensus on the exact wording for the proposal and preamble. EPA received nineteen comments on the proposal. Three were from participants supporting the proposal; the others raised relatively narrow points of interpretation or concern. A final rule was issued on January 15, 1986.

The third negotiation, on Farmworker Protection Standards for Agricultural Pesticides, started on November 4, 1985, and is scheduled to end on March 7, 1986.

C. Residential Wood Combustion (RWC) Standards as a Negotiation Item

1. *Need for Standards.* At the end of 1983, EPA estimates that 10.6 million RWC units were in use. Annual sales of new RWC units are projected to continue at a rate of approximately 1 million units per year.

Actual emissions from RWC units vary greatly, depending upon the design and operation of the combustion device and the type and condition of the fuel. However, data clearly indicate that particulate matter (PM) (which includes polycyclic organic matter (POM)), carbon monoxide (CO), and hydrocarbon (HC) emissions are substantially from RWC appliances.

EPA estimates that RWC units contribute the following annual emissions: PM—2.7 million tons, including POM—20,000 tons; CO—7.4 million tons; HC—62,000 tons. If the sales of RWC units continue at a rate of 1 million units each year, annual emissions would increase by the following estimated amounts if not controlled: PM—216,000 tons, including POM—1,600 tons; CO—584,000 tons; and HC—5,000 tons.

Recent advances in both catalytic and non-catalytic woodstove control technology have brought about significant reductions (50 to greater than 90 percent) of the emission from conventional air-tight RWC units. EPA is aware that emissions from woodstoves pose a significant and growing problem, and that effective control technology is commercially available. On August 2, 1985, EPA announced plans to develop New Source Performance Standards for Residential Wood Combustion Units (50 FR 31504).

2. *Selection as a Negotiation Item.* EPA believes that proposed NSPS for RWC units may be appropriate for development by the regulatory negotiation process. EPA has made a preliminary inquiry among potential parties and representatives of identified

interests to determine if EPA's selection criteria for choosing a candidate for a negotiated rulemaking were satisfied. To qualify under EPA's selection criteria, an item must:

- Be at a pre-proposal stage of development;
- Have a relativelyl small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating a consensus;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to issuing the regulation.

On the basis of this preliminary inquiry, EPA believes that its selection criteria have been met and that negotiations on this rule can be successful. This item is at the pre-proposal phase of development, affected interests are limited in number, and groups representing these interests are identifiable and in an appropriate balance and mix. EPA has contacted them and believes they are interested in negotiating this item in good faith, and are aligned on key issues to address and schedule and groundrules to follow. EPA's lead program office has identified a number of basic issues for which sufficient information is in hand (or will be developed during the negotiations) for resolution; and EPA is publicly committed to establishing NSPS for RWC units expeditiously.

D. Key Issues for Negotiations

We anticipate the key issues to be addressed will include the following:

- How should the affected facility be defined?
- What are the most appropriate methods and procedures for measuring emissions and efficiencies from woodstoves? This issue includes examining factors affecting emissions and measurements such as the sampling train, gas flow measurements, wood loading, burn rate, and altitude effects.
- What is the best demonstrated technology?
- In what units should the standard be expressed?
- What should the numerical emission limit be?

When should the emission limits become applicable?

- What type of woodstove certification and/or lab accreditation program should be established?
- What labeling requirements, if any, should there be?
- How should catalyst replacement be addressed?

II. Negotiation Procedures

EPA requests public comment on whether it should:

- Establish a Federal Advisory Committee;
- Identify interests it believes are affected by the key issues listed above;
- Identify participants who will adequately represent the interests affected by the negotiations; and
- Use regulatory negotiations for this rulemaking, and the extent to which the issues, parties, and procedures are adequate and appropriate.

This Notice also announces:

- The date, time, location, and purpose of an informal organizational meeting to discuss whether the Committee should be formed and negotiations proceed; and
- The tentative date, time, location, and subject matter of the first negotiation meeting (if the Committee is formed).

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Formal Negotiation Procedures

1. Procedure for Establishing an Advisory Committee. As a general rule, an agency of the federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

2. Participants. The negotiating group should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants (listed later in this Notice). We do not believe that each potentially affected organizational or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

3. Requests for Representation. If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

4. Final Notice. After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and request for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee unless EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the Federal Register.

5. *Tentative Schedule.* EPA will hold an organizational meeting on February 12, 1986, from 9:00 a.m. until completion, at The National Institute for Dispute Resolution, 1901 L Street NW., Suite 600, Washington, DC. This meeting is open, and potential participants are encouraged to attend.

The purpose of this meeting is to discuss whether negotiations should proceed, and if so, how the negotiations and Committee should function, what should and should not be covered, to answer questions, and to address any other procedural issues which may arise.

If the final determination is that the Committee should be formed and negotiations should proceed, EPA plans to hold the first meeting of the Advisory Committee on March 12, 1986, at the National Institute for Dispute Resolution. At this first meeting, participants would complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

To ensure timely issuance of the proposal, we intend to terminate the activities of the Committee if it does not reach consensus within four months of the first meeting. The process may end earlier if the facilitator so recommends.

6. *Failure of Advisory Committee to Reach Consensus.* In the event the

Committee is unable to reach consensus, EPA will proceed to develop its own proposal.

B. International Negotiation Procedures

1. *Facilitator.* EPA will use a facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

2. *Good Faith Negotiation.* Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and the Agency will designate a senior official of the Office of Air Quality Planning and Standards as its representative.

3. *Administrative Support and Meetings.* EPA's Regulation Management Branch will supply logistical, administrative and management support. Meetings will be held in the Washington area. To support the negotiations, EPA has pledged funds to a resource pool which the National Institute for Dispute Resolution will administer. EPA expects that funds from private foundations will also be available. These funds may be used by the parties for such activities as training, technical support, computer simulations, and other assistance which the parties deem useful. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

4. *Defining Consensus.* The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

5. *Record of Meetings.* In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register.** Such meetings will generally be open to the public.

6. *Committee Procedures.* Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

7. *Potential Interests and Participants.* EPA has tentatively identified the following list of possible interests and parties:

Woodstove Manufacturers

Wood Heating Alliance
Woodcutters Manufacturing
Brugger Exports, Ltd.
a–b Fabricators
American Eagle Stoves

Catalyst Manufacturers

Corning Glass Works

Public Interest Groups

National Resources Defense Council
Consumers Union
Oregon Environmental Council
Consumer Federation of America

State Officials

Oregon Department of Environmental Quality
Colorado Air Pollution Control Division
Massachusetts Division of Air Quality Control
State and Territorial Air Pollution Program Administrators
The Association of Local Air Pollution Control Officials

Federal Government

Environmental Protection Agency

Comments and suggestions on this tentative list of representatives are invited. Anyone wishing to be included should explain the interest they represent and why that interest is not already represented. The listing of a potential group does not necessarily mean that the group has agreed to participate.

Dated: January 31, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 86–2587 Filed 2–6–86; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2966-8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed January 27, 1986 Through January 31, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860026, Draft, COE, KY, Mayfield Creek Flood Damage Reduction Plan, Due: March 24, 1986, Contact: Billy Dycus (901) 521–3831

EIS No. 860027, Draft, AFS, CA, Plumas National Forest, Land and Resource Management Plan, Due: May 8, 1986, Contact: Lloyd Britton (916) 283–2050

EIS No. 860028, Draft, FHW, VA, VA–199 Construction, VA–5 to I–64, James City and York Cos., Due: March 24, 1986, Contact: James Tumlin (804) 771–2371

EIS No. 860029, Draft, BLM, CO, Little Snake Resource Area, Resource Management Plan, Moffat, Rio Blanca, and Routt Cos., Due: May 9, 1986, Contact: Duane Johnson (303) 824–8261

EIS No. 860030, Final, FHW, CA, Yerba Buena Road and Sylvandale Avenue Connection, Senter Road to San Felipe Road, US 101 and Yerba Buena Road Interchange and Undercrossing Construction, Santa Clara County, Due: March 10, 1986, Contact: David Eyres (916) 440–3541

EIS No. 860031, Draft, EPA, REG, Surface Coating of Plastic Parts for Business Machines, Emissions Standards, Due: March 24, 1986, Contact: James Berry (916) 541–5671

EIS No. 860032, Draft, EPA, OR, Coos Bay Ocean Disposal Sites, Dredged Material Disposal Site, Designation, Coos County, Due: March 10, 1986, Contact: Tudor Davies (202) 382–7166.

Amended Notices

EIS No. 850533, DSuppl, FWS, REG, Migratory Bird Hunting in the United States, Use of Lead Shotgun Pellets, Regulations, Due: February 19, 1986, Published FR 12–20–85—Review period extended

EIS No. 860023, Draft, BPA, ID, WA, MT, OR, Direct Service Industry Options on Reducing Load Fluctuations and Revenue Uncertainty, Due: February 21, 1986, Published FR 1–31–86—WAIVER—The original notice contained an incorrect due date of March 17, 1986. EPA has approved a waiver of the review period for this EIS. Therefore, the correct due date is February 21, 1986

EIS No. 860025, Final, HUD, OK, Shenandoah Development, Mortgage Insurance, Tulsa County, Due: March 3, 1986, Contact: Ivan Ramsbottom (817) 885–5482—Should have appeared in 1–31–86 FR

EIS No. 850557, Final, USA, VA, Fort Story Ongoing Mission, Logistics Over-the-Shore (LOTS) Training, Continued Operations and LOTS Units Modernization, Due: November 4, 1985, Contact: Thomas Traceski (804) 878–4123—Should have appeared in 10–4–85 FR.

Dated: February 4, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-2764 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2966-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 21, 1986 through January 24, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

Summary of rating definitions.

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D-AFS-L65100-ID, Rating EO2, Salmon Nat'l Forest, Land and Resources Mgmt. Plan, ID. SUMMARY: EPA's primary concern is that the DEIS did not clearly provide evidence that federally approved State water quality standards could be satisfied under the preferred alternative (and therefore the proposed Plan). The major reasons are: 1. Insufficient presentation of existing conditions; 2. Insufficient analysis of risks to water quality and beneficial uses posed by specific soil erosion and instability conditions; 3. Riparian area standards that were too general to ensure protection of riparian-related resources; and 4. An unclear commitment that adopted standards and guidelines will in fact apply to all activities which occur.

ERP No. D-CDB-F89024-IL, Rating EC2, Decatur Historic District Development, Demolition, Rehabilitation, and Construction, CDBG, IL. Summary: EPA is concerned that the DEIS did not include analysis of the environmental impacts of asbestos removal on workers or District residents. Information on identification and mitigation of more short-term impacts was also lacking. EPA recommends the inclusion of environmental considerations into each rating system developed by HUD. Because of projections that water supplies will be limiting to development in Decatur in the near future, EPA also recommends that HUD consider the use of water conservation devices in any developments proposed for the Historic District.

ERP No. D-FAA-J51007-CO, Rating E02, Stapleton Int'l Airport Runway Expansion, Approval, Co. Summary: EPA is principally concerned with air quality impacts and possible hazardous waste impacts associated with runway construction on the Rocky Mountain Arsenal site. EPA requests that the FEIS include an analysis of curbside terminal air quality the proposed soil analysis for contaminants, and associated mitigation measures. EPA also requests that the noise analysis be expanded and additional mitigation measures be investigated. Final EISs.

ERP No. F-COE-C32024-NY, Sheepshead Bay Navigation Channel Improvements, NY. Summary: Based on the review of the FEIS, EPA has no objections to the project as proposed. However, EPA indicated that additional testing will be required prior to ocean disposal of the dredged material.

Dated: February 4, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-2765 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59211; FRL-2966-6]

Certain Chemical Premanufacture Exemption Application; Quaternized Fatty Imidazoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

Written comments by: February 24, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59211]" and the specific TME number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-17

Close of Review Period. March 15, 1986.

Manufacturer. Quaker Chemical Corporation.

Chemical. (G) Quaternized fatty imidazoline.

Use Production. (S) Debonder/softener for wood pulp fibers.

Prod range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.

Environmental Release/Disposal. 0.5—2 kg/batch released to water. Disposal by publicly owned treatment works (POTW).

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-2684 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51609, FRL-2966-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-304, April 6, 1986
P 86-432, April 22, 1986
P 86-433, 86-434, 86-435, 86-436, 86-437, and 86-438, April 25, 1986
P 86-439, 86-440, 86-441, 86-442, 86-443, 86-444, 86-445, 86-446, 86-447, 86-448, 86-449, 86-450, 86-451, and 86-452; April 26, 1986
P 86-453, and 86-454; April 27, 1986
P 86-455, 86-456, 86-457, 86-458, 86-459, 86-460, 86-461, 86-462, 86-463, 86-464, and 86-465; April 28, 1986.

Written comments by:

P 86-304; March 7, 1986
P 86-432; March 23, 1986
P 86-433, 86-434, 86-435, 86-436, 86-437, and 86-438; March 26, 1986
P 86-439, 86-440, 86-441, 86-442, 86-443, 86-444, 86-445, 86-446, 86-447, 86-448, 86-449, 86-450, 86-451, and 86-452; March 27, 1986
P 86-453, and 86-454; March 28, 1986
P 86-455, 86-456, 86-457, 86-458, 86-459, 86-460, 86-461, 86-462, 86-463, 86-464, and 86-465; March 29, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51609]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-304

Importer. Confidential.

Chemical. (G) Diester of 1,4-benzenedicarboxylic acid.

Use/Import. (G) Minor component of coatings used on specialty papers. Import range: Confidential.

Toxicity Data. Acute oral: >5,012 mg/kg; Acute dermal: >2,239 mg/kg; Irritation: Skin—Slight, Eye—Minimal.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 86-432

Manufacturer. Confidential.

Chemical. (G) Modified metal chloride.

Use/Production. (G) Chemical catalyst, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-433

Manufacturer. Reed Lignin, Inc.

Chemical. (G) Spent sulfite liquor, alkalai treated polymer with sodium acrylate.

Use/Production. (G) Industrial pellet binder—highly dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 4 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 2 kg solids/batch released to water. Disposal by navigable waterway.

P 86-434

Manufacturer. Reed Lignin, Inc.

Chemical. (S) Lignosulfonic acid, sodium salt, condensation product with formaldehyde and primary oleylamine.

Use/Production. (G) Ink binder—open, non-dispersive use, emulsifier and corrosion inhibitor—dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 3 hrs/da, up to 48 da/yr.

Environmental Release/Disposal. 2.0 kg/batch released to water. Disposal by navigable waterway.

P 86-435

Manufacturer. The Goodyear Tire & Rubber Company.

Chemical. (G) Self-synergized phenolic antioxidant reaction product.

Use/Production. (S) Industrial polymer stabilizer and age resister additive for polymers. Prod. range: 45,000—1,362,000 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 12 hrs/da, up to 96 da/yr.

Environmental Release/Disposal. 12 to 40 kg/batch released to land. Disposal by publicly owned treatment works (POTW).

P 86-436

Manufacturer. Confidential.

Chemical. (G) Chloride of ethoxylated alcohols.

Use/Production. (G) Process intermediate. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Slight; Eye—Moderate.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-437

Manufacturer. Confidential.

Chemical. (G) Trimethyl-silyl blocked hydroxymethylmethacrylate.

Use/Production. (S) Monomer for copolymerization use; intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >4.0 g./kg; Irritation: Skin—Irritant, Eye—Irritant; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. 3 kg incinerated.

P 86-438

Manufacturer. Confidential.

Chemical. (G) Silyl ketene acetal.

Use/Production. (G) Polymerization initiator. Prod range: Confidential.

Toxicity Data. Acute oral: >3,470 mg/kg; Irritation: Skin—Irritant; Eye—Irritant; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. 5 kg incinerated.

P 86-439

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-440

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-441

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-442

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-443

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-444

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-445

Importer. Confidential.

Chemical. (G) Acrylic silicon oligomer.

Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-446

Manufacturer. R.T. Vanderbilt Company Inc.

Chemical. (S) 1,3-propanediol, 2-amino-2-(hydroxymethyl)-sulfate (salt).

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,900 mg/kg.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release.

P 86-447

Manufacturer. Confidential.

Chemical. (G) Tricyclic olefinic hydrocarbons.

Use/Production. (S) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-448

Manufacturer. Confidential.

Chemical. (G) Aromatic amine.

Use/Production. (G) Monomer, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–449

Manufacturer. Confidential.
Chemical. (G) Nitrated aromatic chemical.
Use/Production. (G) Chemical intermediate, destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–450

Manufacturer. Confidential.
Chemical. (G) Polycationic polymer.
Use/Production. (S) Industrial clay stabilizer. Prod. range: 100,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. No release. Disposal by land farm.

P 86–451

Manufacturer. Confidential.
Chemical. (G) Homopolymer of methyethyldiallyammoniumsulfate.
Use/Production. (S) Industrial clay stabilizer. Prod. range: 50,000–100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. No release. Disposal by land farm.

P 86–452

Manufacturer. Lilly Industrial Coatings, Inc.
Chemical. (G) Polymer of benzenedicarboxylic acids, alkanediol, alkanedicarboxylic acid and benzenetricarboxylic acid.
Use/Production. (G) Industrial liquid paints. Prod. range: 36,000–54,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 25 workers, up to 14 hrs/da, up to 77 da/yr.
Environmental Release/Disposal. 1 to 15 kg/batch released to air. Disposal by POTW.

P 86–453

Manufacturer. Confidential.
Chemical. (G) Fluorinated alkyl silane.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 0.89 g/kg; Irritation: Skin—Slight to moderate; Spot plate test: Negative; Agar overlay test: Not mutagenic.
Exposure. Manufacture: dermal, a total of 7 workers, up to 1 hr/da, up to 50 da/yr.
Environmental Release/Disposal. Less than 1 kg/batch incinerated.

P 86–454

Manufacturer. Confidential.
Chemical. (G) Fluoroalkylsiloxane hydrolyzate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >15.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Spot plate test: Negative; Agar overlay test: Not mutagenic.
Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. 1 to 5 kg/batch incinerated. Disposal by approved landfill and waste treatment plant.

P 86–455

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty acid ester of EO/PO block polymer.
Use/Production. (S) Site limited and industrial surfactant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/ batch released to water. Disposal by POTW and waste water treatment.

P 86–456

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty imidazoline.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86–457

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Halogenated, ethoxylated ester.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86–458

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Halogenated, propoxylated ester.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86–459

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Quaternized fatty imidazoline.
Use/Production. (S) Debonder/softener for wood pulp fibers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 to 2 kg/batch released. Disposal by POTW and waste water treatment.

P 86–460

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Quaternized fatty imidazoline.
Use/Production. (S) Debonder/softener for wood pulp fibers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 to 2 kg/batch released. Disposal by POTW and waste water treatment.

P 86–461

Manufacturer. Confidentail.
Chemical. (G) Dehydrated castor oil alkyd resin.
Use/Production. (S) Industrial baking enamels. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 86-462

Importer. Confidential.

Chemical. (G) Substituted monoazo indole.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Skin sensitization: Non-sensitizer; EC_{50} 24 hrs (Daphnia magna): 49 mg/l; LC_0 96 hr (Zebra fish): 56 mg/l; LC_{50} 96 hr (Zebra fish): 74 mg/l; IC_{50} 3 hr: >100 mg/l; Irritation: Skin—Non-irritant; Ames test: Negative; Micronucleus test: Negative; 5-day range finding study: 2,000 mg/kg; Subacute 28-day dermal: No systemic effects noted up to the maximum dose level of 1,000 mg/kg.

Exposure. Processing: inhalation, a total of 2 workers, up to 0.5 hr/da, up to 9 da/yr.

Environmental Release/Disposal. .15 kg/batch released to water. Disposal by POTW.

P 86-463

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Resin is cured with a ketimine to form an auto refinishing system. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-464

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Resins are converted to paints for use in automotive exterior top coats. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-465

Manufacturer. Confidential.

Chemical. (G) Blocked polyamine.

Use/Production. (S) Ketimine cross-linker used in tandem with an acrylic resin and applied in a car repair system. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-2685 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59751, FRL-2966-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-61—February 13, 1986.
Y 86-62—February 16, 1986.
Y 86-63—February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-61

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) A modified styrene acrylic emulsion.

Use/Production. (G) Emulsion polymer for wood coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

Y 86-62

Manufacturer. Confidential.

Chemical. (G) Copolymer of methacrylate esters.

Use/Production. (S) Polymer for industrial, commercial, and industrial use in coatings, adhesives and inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-63

Manufacturer. Superior Varnish & Drier Company.

Chemical. (G) A partially crosslinked castor oil modified polyester.

Use/Production. (S) Industrial metal decorating printing ink vehicle. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 2 to 2,250 kg/batch released to air. Disposal by condenser/scrubber and outside recovery company.

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-2686 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Advisory Committee; Meeting

The Radio Advisory Committee will meet Wednesday, March 19, 1986, at 1:30 p.m. in the Vincent Wasilewski Room of the National Association of Broadcasters at 1771 N Street, NW., Washington, DC.

The Committee will consider:

—Final preparations for the Region 2 Conference on the expansion of the AM band, the first session of which is scheduled to begin April 14, 1986 at Geneva;
—Review and modernization of the AM rules;
—Other business.

All meetings of the Radio Advisory Committee are public, and are open for participation by all interested persons. The meeting convened on March 19, 1986 may be scheduled for resumption at a further session at such later time and place as may be decided at that meeting.

For further information, please call the Committee Chairman, Louis C. Stephens,

at the FCC Headquarters at Washington: (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2511 Filed 2–6–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Recordkeeping and Confirmation Requirements for Securities Transactions (OMB No. 3064–0028).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the recordkeeping and confirmation requirements for securities transactions (OMB No. 3064–0028 which expires March 31, 1986) contained in FDIC regulation 12 CFR 344. These requirements ensure that purchasers of securities in transactions effected by an insured state nonmenber bank are provided adequate information concerning the transactions. These requirements are also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to securities transactions they effect. It is estimated that these requirements impose an annual paperwork burden of 10.69 hours on the average bank.

Dated: February 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–2744 Filed 2–6–86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

Bohemian Savings and Loan Association, St. Louis, MO; Notice of Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Bohemian Savings and Loan Association, St. Louis, Missouri, on January 30, 1986.

Dated: February 3, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–2730 Filed 2–6–86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board Membership

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the FLRA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Clyde B. Blandford, Jr., Director of Personnel, Federal Labor Relations Authority, 500 C St., SW, Washington, DC 20424 (382–0751).

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) of Title 5, United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor—along with any recommendations, including recommendations with respect to bonuses—to the appointing authority relative to the performance of the senior executive.

The members of the FLRA performance review board are:

1. Jacqueline R. Bradley, Federal Labor Relations Authority
2. Robert Perry, Office of General Counsel, Federal Labor Relations Authority
3. John Kratzke, Office of Personnel Management (currently on detail to FLRA)
4. Johnny R. Butler, Equal Employment Opportunity Commission
5. Mary Kelly, Interstate Commerce Commission

Dated: February 3, 1986.

Federal Labor Relations Authority.

Clyde B. Blandford, Jr.,

Director of Personnel.

[FR Doc. 86–2748 Filed 2–6–86; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–010

Title: Mediterranean/U.S.A. Freight Conference

Parties:

Atlanttrafik Express Services, Ltd.
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Container Lines
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" di Navigazione
Jugolinija
Jugooceanija

Lykes Lines
Med-America Express Service
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would clarify the voting procedure used by the Conference and establish procedures to handle abstention from voting.

Agreement No. 217–010883
Title: Linabol/Navicana Space Charter Agreement
Parties: Lineas Navieras Bolivianas S.A.M. (Linabol) Naviera Interamericana "Navicana" S.A. (Navicana)

Synopsis: The proposed agreement would permit Linabol to charter space on Navicana's vessels for Bolivian cargo moving between North and Central American Pacific Coast ports and inland and coastal points to and from South American Pacific Coast ports and inland and coastal points.

By Order of the Federal Maritime Commission.

Dated: February 4, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–2736 Filed 2–6–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Union Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 25, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation,* Charlotte, North Carolina; to acquire Southern International Corporation, Charlotte, North Carolina, and thereby engage in soliciting loans and other extensions of credit, issuing letters of credit and accepting or discounting drafts; collecting and negotiating financial documents, including bills of exchange, promissory notes, checks, drafts, payment receipts, and all types of commercial paper and negotiable instruments; collecting and negotiating commercial documents, including invoices, shipping documents, documents of title, and other similar documents; providing data and information transmission services, facilities and data bases in connection with its international financial activities, where data and information to be transmitted, processed or furnished are financial, banking or economic; providing transfers of funds, whether by check, draft, or similar paper instrument, or by electronic system or any other technologically feasible means in connection with its international financial services; buying and selling foreign currency for the account of others; and furnishing management consulting advice to nonaffiliated banks concerning the provision of international financial services to their customers, pursuant to § 225.25(b)(1), (7), and (11) of Regulation Y, respectively.

B. **Federal Reseve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire Securities Counsel, Inc., Jackson, Michigan, and thereby engage in providing portfolio investment advise to individuals, corporations, and institutions. Comments on this application must be received not later than February 27, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2671 Filed 2–6–86; 8:45 am]

BILLING CODE 6210–01–M

Key Bancshares of New York Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86–1942), published at page 3657 of the issue for Wednesday, January 29, 1986.

Comments on this application must be received not later than February 18, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2673 Filed 2–6–86; 8:45 am]

BILLING CODE 6210–01–M

Moxham Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 28, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Moxham Bank Corporation,* Johnstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Moxham National Bank, Johnstown, Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Rainesville Bancshares, Inc.,* Rainesville, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Rainesville, Rainesville, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *AmBank Financial Services, Inc.,* Rock Island, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Rock Island, Rock Island, Illinois. Comments on this application must be received not later than February 27, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2672 Filed 2-6-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Managment and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 24, 1986

Health Care Financing Administration

Subject: Independent Rural Health Clinic Cost Report Form—Revision—(0938-0107)
Respondents: Businesses
Subject: Medicaid Eligibility Quality Control Disposition List—Revision—(0938-0173)
Respondents: State or Local Goernments
Subject: Information Collection Medicare Requirements in §§ 405.2111, 405.2112, 405.2113, 405.2114, 405.2123, 405.2134, 405.2135, 405.2136, 405.2137, 405.2139, and 405.2140—Conditions of Coverage for End Stage Renal Diseases Facilities—Reinstatement—(0938-0386)
Respondents: Individuals or Households; State or Local Governments; Businesses; Federal Agencies or Employees; Non-profit Institutions; Small Businesses or Organizations
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Head Start Program Information Report—Reinstatement—(0938-0017)
Respondents: State or Local Govenments; Non-profit Institutions
OMB Desk Officer: Judy A McIntosh

Social Security Administration

Subject: Social Security Notice—Report of Work Activity—Continuing Disability—Revision—(0960-0108)
Respondents: Individuals or Households
Subject: Residual Functional Capacity Assessment Mental Residual Functional Capacity Assessment—Existing Collection
Respondents: State or Local Governments
Subject: Summary of Evidence—Existing Collection
Respondents: State or Local Governments
OMB Desk Officer: Judy A. McIntosh

Public Health Services

Centers For Disease Control

Subject: National Sexually Transmitted Diseases Morbidity Program — Extension—(0920-0011)
Respondents: State or Local governments
Subject: Malaria Survey Among U.S. Travelers—NEW
Respondents: Individuals or Households
Subject: National Sexually Transmitted Diseases Epidemiology Program — Revision—(0920-0001)
Respondents: State or Local Governments

Office of Assistant Secretary For Health

Subject: Longitudinal Study on Aging — NEW—(0937-0139)
Respondents: Individuals or Households
OMB Desk Officer: Bruce Artim

Office of The Secretary

Office of The Inspector General

Subject: 42 CFR 455.300 Subpart D—State Medicaid Fraud Control Units—Existing Collection
Respondents: State or Local Governments
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: January 31, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-2622 Filed 2-6-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86M-0001]

University Optical Products, Co.; Premarket Approval of the Boston Lens II (Itafocon A) ALGES® Bifocal Contact Lens (Clear and Tinted)

Correction

In FR Doc. 86-1488, beginning on page 3256, in the issue of Friday, January 24, 1986, make the following corrections.

1. On page 3256, the Docket No. should read as set forth above.

2. On page 3257, second column, second complete paragraph, fourth line, "(21 UY.S.C. 360e(g))" should read "(21 U.S.C. 360e(g))".

BILLING CODE 1505-01-M

[Docket No. 85D-0480]

Draft Guideline for the Design of Clinical Trails for Evaluation of the Safety and Efficacy of Allergenic Products for Therapeutic Uses; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the notice announcing the availability of a draft guideline entitled "Draft Guideline for

the Design of Clinical Trials for Evaluation of the Safety and Efficacy of Allergenic Products for Therapeutic Uses." FDA is taking this action in response to statements from members of the Allergenic Products Advisory Committee and other interested parties that more time will be needed to comment on the guideline.

DATE: Comments by February 20, 1986.

ADDRESS: Requests for a copy of the draft guideline and written comments regarding the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 22, 1985 (50 FR 42777), FDA issued a notice announcing the availability of a draft guideline to assist allergenic biological product manufacturers and investigational sponsors in designing clinical studies to assess the safety and efficacy of allergenic products for therapeutic use. FDA made the draft guideline available for public comment to assist it in developing a final guideline. Comments were requested to be submitted by January 21, 1986.

During a recent advisory committee meeting, members of the Allergenic Products Advisory Committee and other interested parties stated that more time will be needed to comment on the guideline.

FDA has determined that its schedule for issuing the guideline in final form would not be unduly delayed by a 30-day extension of the comment period, and that such an extension to receive additional comments would be in the public interest. Accordingly, the period for submission of comments is extended to February 20, 1986.

Interested persons may, on or before February 20, 1986, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: February 3, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–2670 Filed 2–6–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

[NTP–85–055; NTP–85–056]

National Toxicology Program; Fiscal Year 1985 Annual Plan

The Director of the National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1985*, solicits comments on the Annual Plan, and urges all interested persons to propose chemicals for testing by the NTP.

Background

The National Toxicology Program develops scientific information about potentially toxic and hazardous chemicals which may be used for protecting the health of the American people by preventing chemical-induced disease. The NTP coordinates and strengthens Department of Health and Human Services (DHHS) activities in toxicology research, testing, and test development/validation efforts and provides toxicological information needed by health research and regulatory agencies. NTP's four goals are to:

- Expand the spectrum of toxicologic information obtained on the chemicals nominated, selected, and being tested;
- Increase the numbers of chemicals tested within funding limits;
- Develop, coordinate, and validate a series of tests/protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP consists of the relevant toxicology activities of the National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH); National Center for Toxicological Research, Food and Drug Administration; and National Institute for Occupational Safety and Health, Centers for Disease Control. Relevant programs of the National Cancer Institute (NCI), National Institutes of Health, a charter agency, have been transferred to the NIEHS, but the NCI remains active in the program through membership on the Executive Committee.

The NTP Executive Committee membership links DHHS health research agencies with health regulatory agencies to ensure that NTP's toxicology research, testing and test development activities are responsive to research and public health needs.

The governmental agencies that comprise the NTP Executive Committee are:

- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight of the NTP. The NTP Board advises the NTP Director and the NTP Executive Committee on scientific content and policy and evaluates the merit and overall quality of NTP science. The members (listed in the 1985 Annual Plan) are appointed by the DHHS Assistant Secretary for Health. As NTP Director, Dr. David P. Rall (also the Director of the National Institute of Environmental Health Sciences) reports to the Assistant Secretary for Health.

The program segments of the NTP are grouped into two categories—toxicological research and testing, and coordinative management activities. Individual NTP scientists are identified as leaders of the major program segments and subprogram activities and serve as the focus or contact persons for their particular program activities. Program and project leaders are identified in the 1985 Annual Plan.

The development and approval by the Secretary, DHHS, of the NTP Annual Plan is central to the effective planning, coordination, and operation of the National Toxicology Program. The National Toxicology Program's seventh Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1985* [NTP–85–055] describes current year research, testing, methods development and validation efforts, resources and past year program accomplishments. (Table of Contents follows this announcement.) Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP–85–056] lists chemicals being tested by DHHS agencies, the

Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

The NTP welcomes nominations for testing from all parts of Government and the private sector. At a minimum, the nominator should give the rationale for the nomination and recommend the type test(s) to be considered. In addition, it would be desirable, but is not essential, to supplement each nomination with the following information, it known.

I. Chemical identification.

II. Production, use, occurrence, and analysis.

III. Toxicology.

IV. Disposition and structure-activity-relations.

V. Ongoing toxicological and environmental studies in Government, industry, and academia.

To receive the *NTP Annual Plan for Fiscal Year 1985*, or the *FY 1985 Review of Current DHHS, DOE, and EPA Research Related to Toxicology*, please write or call the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone: (919) 541–3991 or FTS 629–3991).

Written or verbal comments on the FY 1985 Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, Assistant to the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541–3971 or FTS 629–3971).

Dated: February 3, 1986.

David P. Rall,

Director, National Toxicology Program.

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[FR Doc. 86–2687 Filed 2–6–86; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Sections SM.00, SM.10 and SM.20 of the SSA statement, as published in the **Federal Register** on August 7, 1979 describe the Mission, Organization and Function of SSA's office of Management, Budget and Personnel (OMBP). Notice is given that Sections SM.10 and SM.20 are amended to reflect the establishment of a Division of Labor and Employee Relations in the Office of Human Resources and the abolishment of the Division of Labor Relations and the

Division of Disciplinary and Adverse Actions.

The new material and changes are as follows:

Section SM.10 *The Office of Management, Budget and Personnel—(Organization):*

F. The Office of Human Resources (SMH).

Delete:

5. The Division of Labor Relations (SMHJ).

6. The Division of Disciplinary and Adverse Actions (SMHM).

7. The Executive Recruitment and Services Staff (SMHN).

8. The Division of Personnel Operations (SMH9).

Add:

F. The Office of Human Resources (SMH).

5. The Division of Labor and Employee Relations (SMHJ).

6. The Executive Recruitment and Services Staff (SMHN).

7. The Division of Personnel Operations (SMH9).

Section SM.20 *The Office of Management, Budget and Personnel—(Functions):*

F. The Office of Human Resources (SMH).

Delete:

5. The Division of Labor Relations (SMHJ).

6. The Division of Disciplinary and Adverse Action (SMHM).

7. The Executive Recruitment and Services Staff (SMHN).

8. The Division of Personnel Operations (SMH9).

F. The Office of Human Resources (SMH).

Add:

5. The Division of Labor and Employee Relations (SMHJ).

a. Plans and directs the development and evaluation of the SSA labor-management and employee relations (disciplinary and unacceptable performance programs; formulates SSA-wide labor-management and employee relations policy; serves as the SSA reference point for inquiries, guidance and interpretations on labor-management and employee relations matters and provides SSA liaison with OPM, HHS and other non-SSA entities and organizations concerning labor-management and employee relations in SSA.

b. Implements labor-management relations programs and policies throughout SSA's headquarters and field organizations; participates in negotiation and implementation of negotiated procedures with labor organizations; resolves or recommends resolution in labor relations disputes and advises management during bargaining sessions.

c. Represents SSA management in all labor-management relations matters and proceedings which are adjudicated outside the agency.

d. Provides the full range of labor-management relations advisory services to all SSA components to ensure proper application of negotiated provisions and directs monitoring of union-management consultations as required by negotiated agreements or executive orders.

e. Implements an SSA program for disciplinary/adverse and unacceptable performance actions, in accordance with applicable regulations and procedures. Provides technical assistance, guidance, representation and letter writing services for misconduct and performance actions to management in SSA headquarters. Also provides these services to the field in complex cases.

f. In coordination with HHS' Office of the General Counsel, researches law, executive orders, court, Merit Systems Protection Board and comptroller general decisions, regulations, policies, precedents and procedures on disciplinary/adverse actions, employee appeals and grievances.

6. The Executive Recruitment and Services Staff (SMHN).

7. The Division of Personnel Operations (SMH9).

Dated: January 17, 1986.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 86-2741 Filed 2-6-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 34104-OK]

Issuance of Disclaimer of Interest to Lands in Oklahoma; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of Notice of Intent to Issue Disclaimer.

SUMMARY: On January 3, 1986, a Notice was published in the Federal Register (51 FR 257) to disclaim and release all surface interest to the owners of record for the land described.

The intent of the Notice was to disclaim and release all interest for the land described. Therefore, the word surface is deleted from paragraph 1, line 4, and paragraph 21, line 8 of the subject **Federal Register** Notice. Also, part 2b of paragraph 21 is deleted in its entirety.

Jim Sims,

District Manager.

[FR Doc. 86-2693 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-84-M

[A-21760 & A-21761]

Exchange of Public Land, Mohave County, AZ

The entire land description was not included in the above entitled Notice published by the Bureau of Land Management in the **Federal Register** on page 3435 on January 27, 1986. An aliquot part was not included for Section 15. The correct description is:

Section 15, NW¼SE¼NW¼, *NE¼SE¼ NW¼, S½S½NW¼,* SW¼, NW¼NW¼SE¼, S½NW¼SE¼, S½SE¼, excepting Recreation and Public Purposes (R&PP) applications A-21574 and A-21578

In addition, add: Section 14, Lot 1

Dated: January 30, 1986.

J. Darwin Snell,

Yuma District Manager.

[FR Doc. 86-2667 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-32-M

Fairbanks and Anchorage Districts Joint Advisory Council; Meeting

The Advisory Councils for the Fairbanks and Anchorage Districts of the Bureau of Land Management will hold a joint meeting on Tuesday, March 11 and Wednesday, March 12, 1986. The location of the meeting will be the auditorium of the Noel Wien Memorial Library, 1215 Cowles St., Fairbanks, Alaska.

The meeting will convene at 9 a.m. and conclude at 5 p.m. both days. Public comments will be received by the Council from 1 to 2 p.m.

The major topics of discussion will be:

—Alaska Bureau of Land Management organizational structure

—Advice and guidance for future BLM programs in Alaska

All meetings of the Council are open to the public.

Don Runberg,

Acting District Manager, Fairbanks District Office.

[FR Doc. 86-2652 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-JA-M

Worland District, Cody Resource Area, Wyoming: Intent To Prepare a Resource Management Plan Request for Information for Scoping Process and Call for Coal Resource Information

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Initiation of a scoping process for resource management planning, request for current resource information to update the resource inventory base, call for coal resource information and identification of areas of interest in future Federal coal leasing and development in the Cody Resource Area, Worland District, Wyoming.

SUMMARY: The Bureau of Land Management (BLM), Worland District, invites the public to provide information on BLM administered public lands and resources in the Cody Resource Area; to identify concerns to be addressed in the Cody Resource Management Plan (RMP); and to comment on preliminary concerns identified by the BLM staff. This notice is also the specific call for coal resource information and identification of areas with interest in future leasing and development of Federal coal required in 43 CFR 3420.1–2.

SUPPLEMENTARY INFORMATION: The Cody Resource Area includes about 1 million acres of public land and 1.4 million acres of Federal mineral estate administered by BLM in Park and Big Horn Counties, Wyoming.

The Cody RMP is in the preplanning stage. Preplanning activities include: Identifying problems, concerns, conflicts and opportunities concerning public land and resource uses and management; developing planning criteria; assessing data needs; identifying preliminary plan alternatives; developing a schedule for plan preparation; and establishing public participation activities.

The following preliminary issues may be addressed in the RMP: (1) Management of vegetative resources for both consumption (grazing, timber harvesting, etc.) and nonconsumptive (watershed protection, maintenance of cover for wildlife, etc.) uses; and (2) special management actions to protect environmentally sensitive areas or unique resource values. A summary of the basic problems and concerns for these preliminary issues is available for review at the Cody Resource Area Office.

The public, including other federal agencies and state and local governments, is invited to identify additional problems, concerns and management opportunities that should be addressed in the planning process and to comment on those identified by the BLM staff.

The BLM is also requesting resource data and information that will be used to further define issues, update the inventory base or to identify inventory needs, help develop planning alternatives, and analyze environmental consequences. Due to federal budget constraints, the BLM will conduct very little, if any, inventory work. Thus, development of the RMP must rely upon existing, available resource information and data.

Pursuant to 43 CFR 3420.1–2, this notice is a formal request for coal resource information and identification of any substantiated interest in future leasing and development of federal coal in the Cody Resource Area. Specifically, information on the location, quality and quantity of federal coal with development potential and on surface resource values related to the twenty coal unsuitability criteria described in 43 CFR 3461.1 is requested and will be used to conduct any necessary coal screening (43 CFR 3420.1–4) during the planning process.

The BLM has limited coal resource data for the planning area and will be unable to conduct further inventories. Parties interested in federal coal leasing and development will be expected to provide coal and other resource data for their areas of interest. Information concerning areas of leasing interest, coal resource data and other resource information related to the unsuitability criteria must be submitted to the Cody Resource Area Office, at the address below, by April 15, 1986.

Federal coal leasing in areas outside designated coal production regions may be considered apart form the competitive leasing process set out in 43 CFR 3420.3 through 3420.5–2. Since the Cody Resource Area is not within a coal production region, any federal coal leasing will be considered on a case-by-case basis, called "Leasing on Application," under the appropriate provisions of 43 CFR 3425 and 43 CFR 3420.1–4 through 3420.1–8. Note that the sale and issuance of federal coal leases under these provisions is still done through a competitive bidding process.

Identification at this time of definite interests in future federal coal leasing, substantiated with adequate coal and other resource data, will allow these interests to be considered in the planning process. In this way, unnecessary administrative delays or revisions in the plan may be avoided, if coal lease applications are submitted in the future.

Public participation activities will be initiated with an open house to be held at the Cody Resource Area Office, 1714 Stampede Avenue, Cody, Wyoming, on March 4–5, 1986 between the hours of 8:00 a.m. and 8:00 p.m. each day. The public is invited to meet informally with the Resource Area staff to discuss concerns and share information.

The public will have opportunities to participate throughout the planning effort, including input and comment on issues and planning criteria and on the draft and final resource management plan and EIS. Notice of public participation activities will be given through **Federal Register** notices, local media, and mailings to parties included on the Cody Resource Area mailing list.

ADDRESS: Coal resource information and interest in leasing, comments on issues or public land and resource concerns, and submissions of other resource data should be addressed to: Cody Resource Area Manager, Bureau of Land Management, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82214.

Information relating to coal leasing and development should be submitted by April 15, 1986. Other resource information should be submitted by March 31, 1986.

FURTHER INFORMATION: To obtain further information or to be placed on the Cody mailing list contact Bob Ross, Planning Project Manager or Tom Enright, Area Manager, at the address above or telephone (307) 587–2216.

Dated: January 28, 1986.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 86–2582 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–22–M

Filing of Plat of Survey; Utah

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah
T. 4 S. R. 7 W.

This plat represents the dependent resurvey of a portion of the S. and W. boundaries, and a survey of a portion of the subdivisional lines of T. 4 S., R. 7 W., Salt Lake Meridian, Utah for Group 659 accepted October 17, 1985.

Salt Lake Meridian, Utah
T. 29 S. R. 5 E.

This plat represents the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines with a subdivisional survey of section 18 of T. 29 S. R. 5 E. Salt Lake Meridian, Utah for Group 678 accepted November 1, 1985.

Salt Lake Meridian, Utah
T. 6 S. R. 4 E.

This plat represents the dependent resurvey of a portion of the S. and E. boundaries, the subdivisional lines, and the private land claims with a subdivisional survey of section 34 of T. 6 S. R. 4 E., Salt Lake Meridian, Utah for Group 632, accepted November 5, 1985.

Salt Lake Meridian, Utah
T. 30 S. R. 1 W.

This plat represents the dependent resurvey of a portion of the W. boundary and subdivisional lines with a subdivisional survey of section 19 of T. 30 S. R. 1 W., Salt Lake Meridian, Utah for Group 661 accepted November 8, 1985.

Salt Lake Meridian, Utah
T. 13 N. R. 4 E.

This plat represents the dependent resurvey of the S. boundary of T. 14 N. R. 4 E., the N. 2 miles of the E. boundary of T. 13 N. R. 3 E., the North 1 mile of the E. boundary and a portion of the subdivisional lines of T. 13 N. R. 4 E., Salt Lake Meridian, Utah for Group 640 accepted November 18, 1985.

Salt Lake Meridian, Utah
T. 15 N. R. 6 W.

This plat represents the retracement of the Utah and Idaho State boundary between the 78th and 80th mile posts; the dependent resurvey of portions of the S. and W. boundaries and subdivisional lines with a subdivisional survey of section 31 of T. 15 N. R. 6 W. Salt Lake Meridian, Utah for Group 641 accepted November 20, 1985.

Salt Lake Meridian, Utah
T. 3 S. R. 1 E.

This plat represents the dependent resurvey of portions of the S. and E. boundaries and subdivisional lines with a subdivisional survey of sections 12 and 33 of T. 3 S. R. 1 E., Salt Lake Meridian, Utah for Group 627 accepted November 26, 1985.

Salt Lake Meridian, Utah
T. 4 S. R. 2 E.

This plat represents the dependent resurvey of portions of the S. boundary and subdivisional lines, with a subdivisional survey of certain sections of T. 4 S. R. 2 E., Salt Lake Meridian, Utah for Group 631 accepted December 5, 1985.

Salt Lake Meridian, Utah
T. 41 S. R. 14 W.

This supplemental plat of sections 1 and 12, T. 41 S. R. 14 W. Salt Lake Meridian Utah was prepared to show new lottings created by Mineral Survey No.'s 7353 and 7353 AM, and is based upon the plats accepted September 3, 1870, June 30, 1877, and March 11, 1959, and the plats of Mineral Survey No. 7353 approved June 13, 1980 and the plat of Mineral Survey No. 7353 AM approved October 25, 1985, and was accepted October 28, 1985.

Glen B. Hatch,
Chief Branch of Cadastral Survey.
Leroy R. Turner,
Chief, Branch of Administrative Services.
[FR Doc. 86-2676 Filed 2-6-86; 8:45 am]
BILLING CODE 4310-DQ-M

Minerals Management Service

Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 1987 Through 1991

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 1987 through 1991.

SUMMARY: The Secretary of the Interior is issuing for review and comment the Proposed 5-Year OCS Oil and Gas Leasing Program for 1987–1991. The Proposed Program is an intermediate stage in the development of the new 5-year program pursuant to section 18 of the OCS Lands Act, as amended, and consists of a proposed delineation of OCS planning areas, a proposed schedule of sales to be held during the period 1987–1991, and a selection of proposed leasing policies. The Proposed Program is described and analyzed in a Secretarial Issue Document and a draft Environmental Impact Statement (EIS)

A copy of this Notice and other documents explaining the Proposed Program are being sent to the Governors of affected coastal States, to the Congress, and to the heads of affected Federal Agencies.

The proposed Program for 1987–1991 proposes a number of changes to slow the pace and reduce the scope of leasing as compared with the current program: lengthening the period between sales in most areas from 2 to 3 years; and reducing the acreage to be offered for lease by adopting the approach of focusing on promising acreage. This approach incorporates the policy of emphasizing consultation with coastal States and other affected parties with a view to the early resolution of conflicts. In 21 of the 26 OCS planning areas, the Proposed Program schedules 27 standard sales, 10 frontier exploration sales, and 5 small supplemental sales. The Proposed Program has the flexibility to satisfy the statutory requirements to meet national energy needs under a variety of conditions. It responds to recent declines in hydrocarbon prices while at the same time retaining the ability to meet national energy needs under changing geopolitical or economic circumstances. In addition, the Proposed Program continues policies and procedures which assure the receipt of fair market value.

This Notice invites public comment on the Proposed Program. Responses to this Notice will be considered for the Secretarial decision on the adoption of a Proposed Final Program in late 1986/early 1987. After a 60-day congressional and Presidential notification period, the Secretary can give final approval to the new program.

DATE: Comments must be received by May 8, 1986.

ADDRESSES: Comments should be submitted to the Deputy Associate Director for Offshore Leasing, Minerals Management Service (MMS), Mail Stop 641, 18th & C Streets, NW., Washington, DC. 20240. Hand deliveries to the Department of the Interior may be made to Room 2525 at that address. If any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information".

FOR FURTHER INFORMATION CONTACT: Telephone contact may be made with Chris Oynes, Chief, Offshore Leasing Management Division, MMS, at (202) 343-6906 or Paul Stang, Chief, Branch of Program Development and Planning, MMS, at (202) 343-1072. Copies of descriptions of planning area boundaries, maps and block and acreage counts of subareas deferred from leasing, and maps of subareas highlighted for further analysis and comments can be obtained by calling Tim Redding at (202) 343-1072.

Author: Robert Samuels, Branch of Program Development and Planning, MMS.

SUPPLEMENTARY INFORMATION: The Proposed Program is the second of three preparatory versions of the new program prescribed by section 18 of the OCS Lands Act. Initiation of development of the first stage was announced in a July 11, 1984, request for comments published in the Federal Register (49 FR 28332). Completion of

the first stage, the Draft Proposed Program, was announced in the **Federal Register** on March 22, 1985 (50 FR 11585). The consideration of public comments in response to those announcements was an important part of developing the Proposed Program.

Pursuant to section 18, the schedule and policies selected for the Proposed Program were based on a consideration of the factors specified by the act and provide "to the maximum extent practicable, a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone." The Proposed Program is also designed to allow all parties to plan for OCS leasing activities while providing sufficient flexibility to meet national energy needs under changing circumstances affecting the price and supply of oil and gas.

The proposals which comprise the Proposed Program will be reviewed at two later program development stages: the Proposed Final Program, planned for late 1986/early 1987; and final approval, following appropriate consultation and a 60-day congressional and Presidential notification period.

The following explanatory items appear at the end of this Notice: Figure 1, which depicts the leasing schedule selected for the Proposed Program; and Maps 1 and 2, depicting the planning areas.

1. Planning Area Boundaries for the Proposed Program

The proposed configuration of OCS planning areas is depicted on Maps 1 and 2.

The configuration of several of those planning areas was further revised by the Secretary's decision to include in the Proposed Program a provision that would defer from leasing the following 15 portions of OCS planning areas ("subareas"): offshore California—the area offshore Pt. Reyes Wilderness, Pt. Reyes-Farallon Islands National Marine Sanctuary, the area offshore San Francisco Bay, the area in the immediate vicinity of Cordell Bank, the area offshore Monterey Bay, the area offshore Big Sur, the Santa Barbara Federal Ecological Preserve and Buffer Zone, Channel Islands National Marine Sanctuary, and the Coordinated Anti-Submarine Warfare Area (San Nicolas Basin); offshore Florida—Seagrass Beds, the Florida Middle Ground, and the Atlantic coast portion of the Straits of Florida planning area extending to 25°07′ N. latitude; offshore Georgia—Gray's Reef National Marine Sanctuary; offshore North Carolina—the U.S.S. Monitor National Marine Sanctuary and Buffer Zone; and offshore Texas—the Flower Garden Banks. Maps depicting these subareas will appear in the draft EIS. Separate copies of those maps and a list of block and acreage counts for those subareas can be obtained by calling the contact person indicated above.

In addition, the Secretary highlighted the following 13 subareas for further analysis and comments: three subareas extending 15 nautical miles offshore, in the North, South, and Mid-Atlantic planning areas; the Gulf of Maine; the National Aeronautics and Space Administration Flight Clearance Zone offshore Cape Canaveral (extending to 170 nautical miles offshore); a subarea extending between 20 and 30 nautical miles offshore the Florida Gulf Coast from Naples to Apalachicola; the subarea south of 26° N. latitude and east of 82° W. longitude in the "Miami" official protraction diagram offshore Florida in the Eastern Gulf of Mexico; the three subareas estimated by MMS to be beyond the area of hydrocarbon potential in the Washington-Oregon, Northern California, and Central California planning areas; two subareas totaling approximately 210 blocks adjacent to Unimak Pass, Alaska, in the St. George Basin and the North Aleutian Basin planning areas; and a subarea of approximately 59 blocks offshore Point Barrow, Alaska.

Maps depicting these subareas will appear in the draft EIS. Separate copies of those maps can be obtained by calling the contact person indicated above.

2. The Leasing Schedule for the Proposed Program

a. General

Over the 5-year period 1987–1991, the Proposed Program provides for 27 standard sales, 10 frontier exploration sales, and 5 small supplemental sales. These sales are scheduled in 21 of the 26 OCS planning areas. The Proposed Program schedules annual standard sales in the two highest-value, highest-interest areas, the Central and Western Gulf of Mexico. It proposes 27 standard or frontier exploration sales in 19 other areas, with approximately 3 years or longer between sales. The Proposed Program does not schedule any sales in Aleutian Arc, Aleutian Basin, Bowers Basin, St. Matthew-Hall, or the Straits of Florida. A question about whether a sale should be scheduled in the southern portion of the Straits of Florida planning area for the Proposed Final Program appears at the end of this Notice.

The basic determinants of the sale schedule depicted in Figure 1 are the pace of leasing decided upon by the Secretary, the date of the last sale held or scheduled in a planning area, and other administrative considerations. Thus, on the one hand, a single sale is scheduled for Norton Basin in 1989 because that is 3 years after the 1986 Norton Sale (Sale 100) and the 5-year period of the program ends before the subsequent 3-year cycle. On the other hand, two sales are scheduled in the Beaufort Sea (1987 and 1990) because the 3-year cycle starts with the 1984 Beaufort Sea Sale.

b. Flexibility Provisions

The Proposed Program contains three flexibility features: frontier exploration sales; supplemental sales; and the acceleration provision.

Frontier exploration sales are proposed for areas where incomplete geological data, MMS estimates of lower value, or current industry indications of lower interest call for an early decision point on whether to proceed with the standard presale process. For these sales, a Request for Interest soliciting industry interest in holding the sale will be published in the **Federal Register** approximately 4 months prior to the Call. Responses to that request, as well as the annual review of the program under section 18(e), will be used to help determine whether to proceed with the presale process. If interest is insufficient to justify proceeding with the sale, it can be delayed or cancelled. If delayed, a Request for Interest can then be reissued on a perennial or less frequent basis until interest is determined to be sufficient to hold the sale or the sale is cancelled. Ten frontier exploration sales are proposed: two in the North Atlantic and one in the Mid-Atlantic, the South Atlantic, Washington-Oregon, and the same five Alaska areas where such sales were scheduled in the Draft Proposed Program (Shumagin, Kodiak, Cook Inlet, Gulf of Alaska, and Hope Basin).

Supplemental sales on an annual basis are included in the Proposed Program for a small number of blocks in areas other than the Central and Western Gulf of Mexico in either of the following categories: blocks on which bids were rejected in the preceding year (i.e., the year preceding the one in which the supplemental sale is scheduled by the 5-year program); or drainage and development blocks.

The reoffering of rejected bid blocks would diminish the cost of delay of leasing blocks demonstrated to be of interest to industry. This provision would reintroduce the concept of drainage sales on a basis compatible with the requirements of the OCS Lands

Act Amendments of 1978 and similar to procedures of the State of Alaska (set forth in Alaska Statutes 38.05.180(d)). These blocks will only be offered after compliance with the requirements of the National Environmental Policy Act, the OCS Lands Act, and other applicable statutes. The environmental assessment documentation for each of these sales would be released prior to the proposed Notice of Sale. If it is determined that an EIS is required for one or more blocks to be offered in one of these sales, revised presale milestones would be issued.

The acceleration provision responds to the need to plan for an unknown future with limited information. Changes in the world energy market as well as exploration results in frontier areas can dramatically affect the demand for offshore leases. Thus, the 5-year program needs to have flexibility to adjust to major unforeseen developments. One means of providing such flexibility is the provision to permit the acceleration of leasing from triennial to biennial, if carefully defined criteria are met (but not so as to increase the total number of sales in any planning area in the approved program). The areas where such acceleration could be considered include: Southern California; Eastern Gulf of Mexico; Central California; Northern California; Navarin Basin; Beaufort Sea; North Aleutian Basin; and St. George Basin.

The question of whether to accelerate a sale in an area would be made on a sale-by-sale basis. Consideration of accelerating a particular sale would be initiated by any one of four criteria: (1) A finding by the Secretary that a new discovery in a planning area indicates that biennial leasing there is in the national interest; (2) activation of the International Energy Agency's oil sharing agreement; (3) drawdown of the Strategic Petroleum Reserve because of a severe oil supply disruption; or (4) a major disruption in Mideast oil shipments. Comments on possible economic criteria in particular are solicited at the end of this Notice.

The concept of acceleration, which was introduced in the Draft Proposed Program to provide flexibility, is still under development. Comments are requested on appropriate means of implementing acceleration, including criteria for considering it in a particular planning area. Such criteria would identify a necessary component of the decision for accelerating leasing. A decision by the Secretary that acceleration is appropriate would be based on close consultation with affected States and consideration of the Nation's energy needs, environmental factors—including the results of the Environmental Studies Programs, and multiple-use factors.

The purpose of including the acceleration provision in an approved leasing program is so that its exercise would be the implementation of part of the program approved pursuant to section 18 rather than a significant revision of it.

3. Size of Lease Sales

The proposed presale process, focusing on promising acreage, determines the size of lease sales. The Department uses an extensive consultation and balancing process to offer acreage where OCS leasing would be environmentally sound and has a potential to lead to exploration for oil and gas resources. In this process, the Department uses information and nominations obtained from affected States, local governments, Federal Agencies, the public, and potential bidders, as well as MMS analyses. Focusing on promising acreage aims at the resolution of conflicts early in the presale process by the achievement of consensus on key issues—especially concerning acreage with low MMS resource estimates and low industry interest.

Early steps in the presale process include the Call for Information and Nominations and the Area Identificaion. The Call depicts the area of hydrocarbon potential projected by MMS. The Call may be tailored on a case-by-case basis to exclude portions of the planning area (as in the exlusion of the Flower Garden Banks from the 1987 Western Gulf of Mexico Sale). In area Identification, responses to the Call are used in structuring the area to be analyzed in the EIS. In addition to these early steps, consultation also occurs at later steps in the presale process.

4. Assurance of Receipt of Fair Market Value in the Proposed Program

Section 18(a)(4) of the OCS Lands Act provides that leasing activities are to be conducted so as to assure receipt of fair market value for lands leased and rights conveyed. The Proposed Program maintains both the current procedures for assuring the receipt of fair market value and the current flexible policy for reconsidering the basic approach of $150/acre as the minimum bid on a sale-by-sale basis. The proposed program also provides for a review of the criteria to be used in that reconsideration of the minimum bid level.

Information Requested

This Notice has been prepared to obtain public views on the above proposals. Comments may be submitted on any topic related to the new 5-year program. Comments are requested in particular on the following specific topics.

(1) The proposed configuration of planning area boundaries, including the deferral of leasing in the 15 subareas described above.

(2) The 13 subareas highlighted for further analysis and comment: three subareas extending 15 nautical miles offshore in the North, South, and Mid-Atlantic planning areas; the Gulf of Maine; the National Aeronautics and Space Administration Flight Clearance Zone offshore Cape Canaveral (extending to 170 nautical miles offshore); a subarea offshore the Florida Gulf Coast extending between 20 and 30 nautical miles from shore from Naples to Apalachicola; the subarea south of 26° N. latitude and east of 82° W. longitude in the "Miami" official protraction diagram offshore Florida in the Eastern Gulf of Mexico; the three subareas estimated by MMS to be beyond the area of hydrocarbon potential in the Wahington-Oregon, Northern California, and Central California planning areas; two subareas totaling approximately 210 blocks adjacent to Unimak Pass, Alaska, in the St. George Basin and North Aleutian Basin planning areas; and a subarea of approximately 59 blocks offshore Point Barrow, Alaska. Maps depicting these subareas will appear in the draft EIS and separate copies of them can be obtained by calling the contact person indicated above.

(3) The appropriateness of the number of proposed sales and the interval between proposed sales; and, in particular, whether there should be biennial rather than triennial sales in the Eastern Gulf of Mexico.

(4) The appropriateness of the location of proposed sales; and, in particular, whether there should be a sale in 1991 in the portion of the Straits of Florida planning area south of 25°07' N. latitude.

(5) The proposed presale process of focusing on promising acreage; and, in particular, the following possible techniques for implementing that approach:

(A) The recommendation of Massachusettes that nomination procedures be revised so as to request more detailed information from industry on areas of interest prior to the issuance of the Call (to be displayed in the Call), and again after the issuance of the draft EIS.

(B) The recommendations of the American Petroleum Institute, the National Ocean Industries Association,

and a number of oil and gas producers that nomination procedures be revised so as to request more detailed information concerning "negative nominations."

(C) A sale-by-sale decision on whether to publish a notice in the Federal Register announcing the availability of the MMS proposed Call area for industry interest review prior to the issuance of the Call.

(6) The proposed means of pursuing flexibility in the new program in light of national energy needs and uncertainty over future oil and gas supplies and prices; and, in particular, the following possible economic criteria for the acceleration provision—

(I) Activation of the International Energy Agency's oil sharing agreement;

(II) Drawdown of the Strategic Petroleum Reserve (SPR) because of a severe oil supply disruption;

(III) Major disruption in Mideast oil shipments;

(IV) Imports of crude oil and refined petroleum products (excluding those for the SPR) reach a specific percentage of the trade deficit over a specified period;

(V) Imports of crude oil and refined petroleum products (excluding those for the SPR) reach a specific percentage of total domestic consumption of petroleum products over a specified period;

(VI) The price of imported crude oil (U.S. refiners' acquisition cost as computed by the Energy Information Administration (EIA)) rises by a specified amount or percent over a specified period;

(VII) Net imports of petroleum (excluding those for the SPR) are projected by EIA to equal or exceed a specified percent of U.S. consumption of refined petroleum products;

(VIII) Oil prices are projected by EIA to increase by a specified amount or percent or reach a specified level.

In light of the reconfiguration of planning areas resulting from the 15 subarea deferrals proposed by the Secretary, industry respondents in particular are requested to re-rank all 26 planning areas of the OCS. Separate rankings are requested for: (i) Hydrocarbon potential; and (ii) exploration and development interest. Both rankings should be based on estimates of resources expected to be unleased as of January 1987. Industry respondents are also asked to indicate those areas in which they intend to operate or have serious interest in leasing or operating so that their rankings can be interpreted most usefully by MMS. Industry respondents are also requested to indicate whether the deferral of leasing in any of the subareas highlighted in comment topic 2, above, would result in a significant decrease in the rank of the affected planning area(s).

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only rankings be treated as confidential, they should be submitted as an attachment to the other comments which a respondent submits. An attachment to a response containing privileged or proprietary information will, upon request, be treated as confidential from the time of receipt by MMS until 5 years after final approval of the next leasing program. However, summaries of rankings submitted to MMS, the names of respondents submitting rankings, and comments other than rankings will not be treated as confidential information.

Dated: February 4, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

BILLING CODE 4310-MR-M

Figure 1

U.S. DEPARTMENT OF THE INTERIOR

PROPOSED 5-YEAR OCS OIL AND GAS LEASING PROGRAM

FEBRUARY 1986

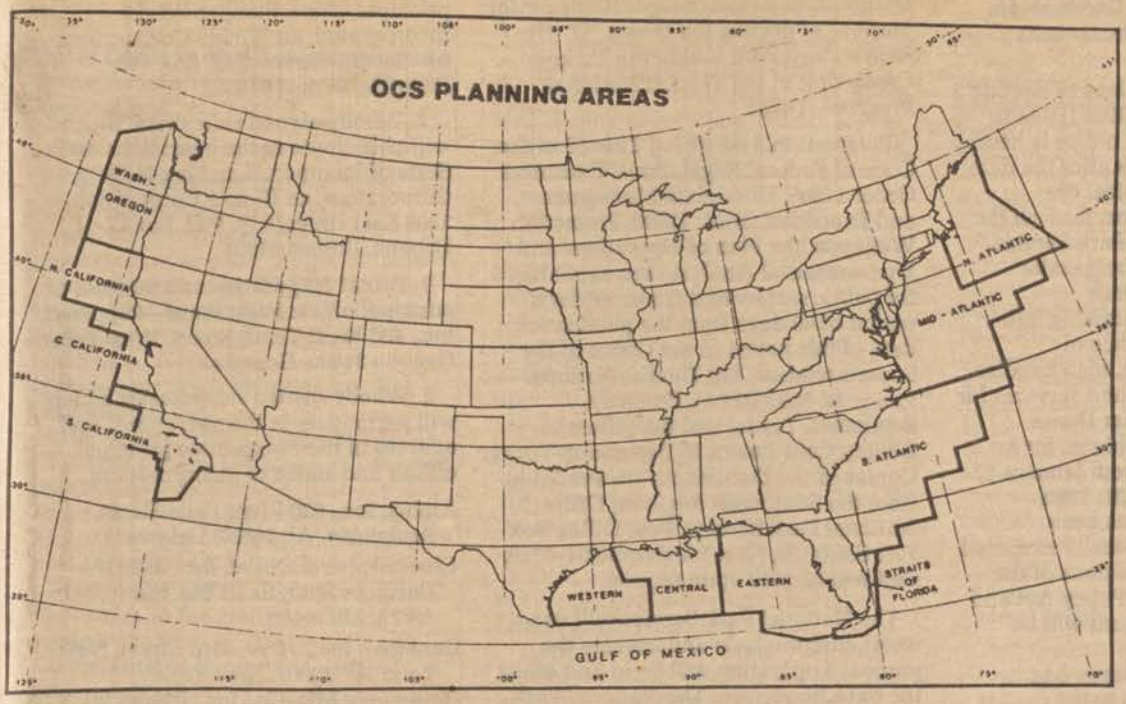
	SALE	SALE DATE
110	C. GULF OF MEXICO	4/87
97	BEAUFORT SEA	7/87
112	W. GULF OF MEXICO	8/87
SU1	SUPPLEMENTAL	9/87
109	CHUKCHI SEA	10/87
107	NAVARIN BASIN	3/88
113	C. GULF OF MEXICO	3/88
91	N. CALIFORNIA	4/88
86	SHUMAGIN	4/88
95	S. CALIFORNIA	5/88
*114	GULF OF ALASKA	8/88
115	W. GULF OF MEXICO	8/88
SU2	SUPPLEMENTAL	9/88
* 96	N. ATLANTIC	10/88
116	E. GULF OF MEXICO	11/88
117	N. ALEUTIAN BASIN	1/89
118	C. GULF OF MEXICO	3/89
119	C. CALIFORNIA	5/89
120	NORTON BASIN	6/89
*121	MID-ATLANTIC	7/89
122	W. GULF OF MEXICO	8/89
101	ST. GEORGE BASIN	9/89
SU3	SUPPLEMENTAL	9/89
*108	S. ATLANTIC	2/90
123	C. GULF OF MEXICO	3/90
124	BEAUFORT SEA	5/90
125	W. GULF OF MEXICO	8/90
SU4	SUPPLEMENTAL	9/90
126	CHUKCHI SEA	11/90
*127	KODIAK	1/91
128	N. CALIFORNIA	2/91
*129	SHUMAGIN	2/91
130	NAVARIN BASIN	3/91
131	C. GULF OF MEXICO	3/91
*132	WASHINGTON-OREGON	4/91
*133	HOPE BASIN	5/91
*134	N. ATLANTIC	6/91
135	W. GULF OF MEXICO	8/91
*136	COOK INLET	9/91
SU5	SUPPLEMENTAL	9/91
137	E. GULF OF MEXICO	11/91
138	S. CALIFORNIA	12/91

*Frontier Exploration Sale. The question of whether the Call for Information and Nominations for these sales will be issued will be addressed in light of responses to the Request for Interest.

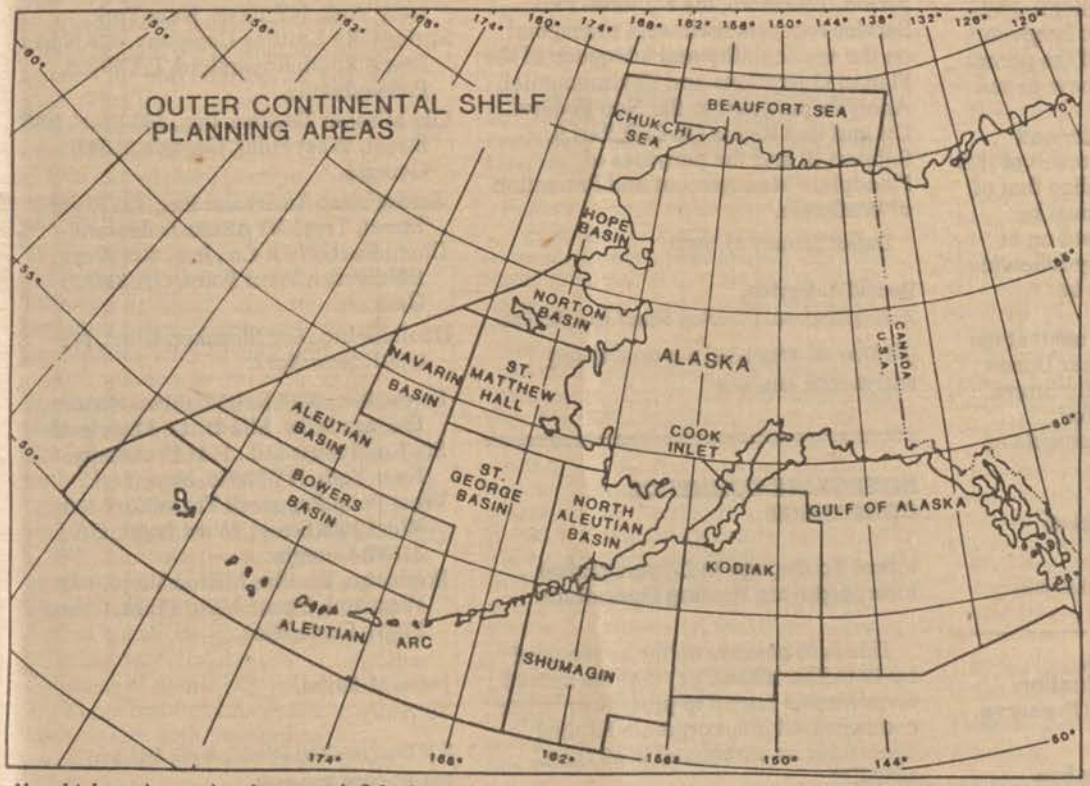
R – Request for Interest C – Call for Information & Nominations D – Comments on Call Due A – Area Identification E – Draft EIS H – Public Hearing F – Final EIS

I – Issue Environmental Assessment for Supplemental Sale P – Proposed Notice of Sale G – Governor's Comments Due N – Notice of Sale S – Sale

Map 1



Map 2



Maritime boundaries and limits depicted on the maps and divisions shown between planning areas are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.

[FR Doc. 86-2750 Filed 2-6-86; 8:45 am]

17

BILLING CODE 4310-MR-C

National Park Service

Intention To Negotiate Concession Permit; Dune Climb Refreshment Stand

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 19 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with the Dune Climb Refreshment Stand, authorizing it to continue to provide the sale of refreshments, handcrafts, merchandise, and souvenirs, facilities and services for the public at Sleeping Bear Dunes National Lakeshore, Michigan, for a period of five (5) years from January 1, 1986, through December 31, 1990.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which will expire on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Sleeping Bear Dunes National Lakeshore, 400 Main Street, Frankfort, Michigan 49635, for information as to the requirements of the proposed permit.

Charles H. Odegaard,

Regional Director, Midwest Region.

January 6, 1986.

[FR Doc. 86-2758 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

Environmental Statements, Availability, etc.; TXO Production Corp., Big Thicket National Preserve, TX

The National Park Service has received from TXO Production Corporation a Plan of Operations for the purpose of drilling the Dixon "O" No. 1 Exploratory Well within the Turkey Creek Unit of Big Thicket National Preserve, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, the Plan of Operations and Environmental Analysis are available for public review and comment for a period of 60 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; and the Jefferson County Courthouse, in Beaumont, Texas. Copies of the Documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

The National Park Service will use a worst case analysis and assume the proposed operation will be in and affect the base floodplain. The National Park Service will seek official determination of the operation's location in a wetland and/or floodplain during this review period. Therefore, the National Park Service requests reviewers to respond on the applicability and adequacy of the Plan of Operations and Environmental Analysis pursuant to the Non-Federal Oil and Gas Rights (36 CFR Part 9, Subpart B) and the purposes of Floodplain Management and Protection of Wetlands.

Dated: January 31, 1986.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 86-2759 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Bumper Works Incorporated, an Illinois Corporation, 647 Section Street, P.O. Box 448, Danville, Illinois 61832.

2. Wholly owned subsidiary which will participate in the operations and State of Incorporation: Flex-N-Gate Corporation, an Illinois Corporation, 1306 East University, P.O. Box C, Urbana, Illinois 61801.

1. Parent corporation and address of principal office: West Point—Pepperell, Inc., 400 West Tenth Street, West Point, Georgia 31833, Georgia.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Alatex, Inc., 620 River Falls Street, Andalusia, AL 36420, Delaware.

Cluett Apparel Outlet, Inc., 3522 I75 Business Spur, Sault Ste. Marie, MI 49873, Michigan.

Donmoor, Inc., 34 W. 33rd Street, New York, NY 10001, New York.

Hometown Mfg. Co., Inc., Industrial Boulevard, Greensboro, GA 30642, New York.

Shoreham Classics, Inc., 530 5th Avenue, New York, NY 10036, New York.

Spring City Knitting Company, 475 North Lewis Road, Royersford, PA 19468, Pennsylvania.

Old Mission Textiles, Inc., 400 West 10th Street, West Point, Georgia 31833, Georgia.

Arrow Inter-American, Inc., 433 River Street, Troy, NY 12180, Delaware.

Cluett Peabody & Co., Inc., 400 West 10th Street, West Point, GA 31833, Georgia.

Duofold, Inc., 502 Bleecker, Utica, NY 13501, New York.

Leroy, Inc., 9818 Reisterstown Road, Owings Mills, MD 21117, Maryland.

Six Continents Ltd., 1441 Broadway, New York, NY 10018, New York.

West Point Pepperell Trans. Co., 400 West 10th Street, West Point, GA 31833, Georgia.

Productos Textiles Mision Vieja, 400 West 10th Street, West Point, Georgia 31833, Costa Rica.

James H. Bayne,

Secretary.

[FR Doc. 86-2688 Filed 2-6-86; 8:45 am]

BILLING CODE 7035-01-M

[OP3FD-23 (ICC-Reg.); OP3FD-24 (Fed.-Reg.)]

Motor Carriers; McAllister Towing and Transportation Co., Inc., et al.; Finance Applications

Decided: January 31, 1986.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's rules of practice. See Ex Parte 55. (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and *I.C.C. Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

[Finance Docket No. 30756]

McCallister Towing and Transportation Co., Inc., and McAllister Feeder lines, Inc.—Purchase—Norfolk, Baltimore and Carolina Line, Inc.

Agency: Interstate Commerce Commission.

Action: Notice of proposed acquisition of water carrier operating authority and other assets under 49 U.S.C. 11343 and notice of approval of waiver of informational filing requirements.

Summary: By application under 49 U.S.C. 11343 McAllister Towing and Transportation Company, Inc. (MTT), and McAllister Feeder lines, Inc. (MFL), propose to acquire the water carrier operating authority and other assets of Norfolk, Baltimore and Carolina Line, Incorporated, a regulated water carrier operating under Certificate and Permit No. W-595. Under the proposed transaction, MTT will acquire the relevant authorities and then sell them to its newly-formed, wholly-owned subsidiary, MFL. MTT also controls three other water carriers: (1) McAllister Lighterage Line, Inc. (MLL), (W-81); (2) McAllister Transport Lines, Inc. (MTL) (W-457); and (3) Bridgeport and Port Jefferson Steamboat Company (B&PJ) (W-271). This common control has been approved in Finance Docket Nos. 16079 and 25091. MLL and MTL provide a variety of common and contract water carrier services by self-propelled and non-self-propelled vessels along the Atlantic, Gulf and Pacific coasts and tributary waterways, transporting general commodities on behalf of the shipping public. B&PJ provides passenger and property ferry service on Long Island Sound. NBC also holds motor carrier authority in No. MC-142795. In a separate proceeding No. MC-F-16918, *McAllister Towing and Transportation Company, Inc. and McAllister Feeder Lines, Inc.—Purchase Exemption—Norfolk, Baltimore and Carolina Line, Incorporated*, filed November 27, 1985, petitioners seek an exemption of the Commission's regulations for MTT and then MFL to purchase all of the motor rights of NBC. NBC also holds property broker authority. However transfer of this authority is not contemplated in this proceeding. An application authorizing the temporary lease by MFL of NBC's relevent operating rights (water and motor) has been approved by the Motor Carrier Board. Division 2 of the Commission has granted the parties' request for waiver of a portion of informational filing requirements under 49 CFR 1181.11.

Date: Comments are due 45 days from date of publication in the *ICC Register* and **Federal Register**.

Addresses: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representative: Norman J. Philion, 1920 N Street, NW., Washington, DC 20036

Comments should refer to finance Docket No. 30756.

Decided: January 31, 1986.

For further information contact: Eric Davis, 275-7941.

Supplementary information: The transaction embraces the transfer of all of NBC's interstate operating authority in No. W-595 which authorizes the transportation: (1) As a water common carrier of general commodities, between the ports of New York, NY, Philadelphia, PA, Baltimore, MD, and Norfolk, VA by way of the Atlantic Ocean, Delaware River, Chesapeake and Delaware Canal and Chesapeake Bay, serving all intermediate points and tributaries, and (2) as a water contract carrier, of general commodities (except classes A and B explosives), between ports and points on the Atlantic Coast and tributary waterways and ports and points on the Gulf of Mexico.

MTT and MFL will also acquire from NBC a total of 5 tugs and 7 barges, and miscellaneous equipment used in conducting its business.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-2689 Filed 2-6-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; B. F. Goodrich

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 22, 1986, a proposed consent decree in *U.S.* v. *B.F. Goodrich*, Civil Action No. C84–3137 was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged violations of the Clean Air Act by Goodrich due to particulate emissions from two coal-fired boilers, Boilers 3 and 4, at its general chemical manufacturing plant located at Avon Lake, Ohio. The complaint sought to prohibit operation of the boilers without adequate pollution controls. The consent decree provides that Goodrich will shut down both Boiler 3 and Boiler 4. Under the terms of the decree Boiler 4 may be operated only under specified emergency conditions. The decree also requires B.F. Goodrich to pay a penalty of $40,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *B.F. Goodrich*, D.J. Ref. 90–5–2–1–708.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114; the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2694 Filed 2–6–86; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Resource Conservation and Recovery Act of 1976, as Amended; Hudson Refining Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 31, 1986, a proposed Partial Consent Deree in *United States* v. *Hudson Refining Co., Inc. and Hudson Oil Company*, Civil Action No. 84–2027A, was lodged with the United States District Court for the Western District of Oklahoma. The proposed Partial Consent Decree requires the Defendants to comply with certain requirements of the Oklahoma Rules and Regulations for Industrial Waste Management; to pay a civil penalty of $100,000 for past violations of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, and applicable regulations; and to conduct a site investigation for potential releases and sources of release of hazardous waste or hazardous waste constituents at its petroleum refinery in Cushing, Oklahoma.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hudson Refining Co., Inc. and Hudson Oil Company*, D.J. Ref. No. 90–7–1–262.

The proposed Partial Consent Decree may be examined at the Office of the United States Attorney for the Western District of Oklahoma, 4434, U.S. Courthouse, Oklahoma City, Oklahoma, and at the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, InterFirst II Building, Dallas, Texas. Copies of the proposed Partial Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.10 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2695 Filed 2–6–86; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; Stockton Port District, CA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 30, 1986, a proposed consent decree in *United States* v. *Stockton Port District*, Civil Action No. S–84–1249–LKK was lodged with the United States District Court for the Eastern District of California. The proposed consent decree concerns the discharge of fertilizer into the Stockton Ship Channel in violation of the Clean Water Act. The proposed consent decree requires the Port District to apply for a NPDES permit, abate further discharges, and pay a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stockton Port District*, D.J. Ref. 90–5–1–1–2164.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, 3305 Federal Building, Sacramento, California and at the Region IX Office of the Environmental Protection Agency 215 Fremont Street, San Francisco, California. Copies of the Proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2696 Filed 2–6–86; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 4-86]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Legal Policy (OLP), Department of Justice, will modify a system of records last published on September 30, 1977, in **Federal Register** Volume 42, page 53353, and identified as the "Declassification Review Index, JUSTICE/DAG-001." Specifically, OLP will modify the system to reidentify the system name as "Declassification Review System, JUSTICE/OLP-004." This reidentification is consistent with a Department reorganization where the management roles of the Associate Attorney General and Deputy Attorney General were restructured and OLP was established. The records are now under the management of OLP. Consistent with the reorganization, OLP is also redesignating the system location and manager. In addition, OLP is expanding the categories of individuals and records covered by the system, adding a new routine use, revising the safeguards and retrievability procedures, and exempting the system from certain provisions of the Privacy Act. (A proposed rule to exempt the system is being published in the Proposed Rules section of today's **Federal Register**.)

5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on the new routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the modified system. However, a waiver of the 60-day requirement has been requested of OMB. Therefore, please submit comments by March 10, 1986. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street NW., Washington, DC 20530.

Dated: December 18, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/OLP-004

SYSTEM NAME:

Declassification Review System.

SYSTEM LOCATION:

Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses: (1) Individuals who (under the Freedom of Information Act (FOIA) or Privacy Act) appeal from the denial of access to classified Department of Justice documents; (2) individuals who (under the FOIA of Privacy Act) request declassification of and access to classified documents from the Office of the Attorney General, Deputy Attorney General, Associate Attorney General, or Legal Policy; and (3) individuals who (under Executive Order 12356) request declassification of and access to classified Department of Justice documents which are maintained in a Presidential library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of (1) copies of classified documents which originated in any component of the Department of Justice and which were denied by a component under the FOIA or Privacy Act, and classified notes and cover sheets created during the declassification review of those documents; (2) classified Attorney General, Deputy Attorney General, Associate Attorney General, and Office of Legal Policy documents which are requested under the FOIA or Privacy Act, classified notes created during the declassification review of these documents, correspondence with other Federal agencies concerning the declassification or release of information which originated with the agencies or in which they have a substantial interest, and copies of responses to the requesters; and (3) copies of final declassification determinations by Department components of Department documents maintained in Presidential libraries as required by Executive Order 12356, Section 3.4(a).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

Classified Department records identified under category (1) above are reviewed by the Attorney General's Department Review Committee (DRC) to determine whether or not they continue to be properly classified pursuant to Executive Order 12356. The DRC was established to resolve issues concerning the administration of the President's Executive Order on national security information. DRC members consist of representatives from the Federal Bureau of Investigation, Criminal Division, Justice Management Division, and the Offices of Legal Counsel, Intelligence Policy and Review and the Deputy Attorney General, Attorney General, Deputy Attorney General, Associate Attorney General, and Office of Legal Policy records identified under categories (1) and (2) above are reviewed by the Office of Legal Policy to determine whether the records should be declassified and considered for release pursuant to the FOIA or Privacy Act. Copies of final declassification determinations identified under catetory (3) above are simply stored in the Classification Review Unit of the Office of Legal Policy. The Unit serves as the routing point for Department of Justice documents referred by a Presidential library for declassification review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of Information and Privacy is authorized to appear when (a) the Office of Information and Privacy, or any subdivision thereof, or (b) any employee of the Office of Information and Privacy in his or her official capacity, or (c) any employee of the Department of Justice in his or her individual capacity where the Department has agreed to represent the employee, or (d) the United States, where the Office of Information and Privacy determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of Information and Privacy to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets or safes.

RETRIEVABILITY:

These records are indexed and retrieved manually by the individual's name or case file number.

SAFEGUARDS:

Classified records are stored in safes with combination locks. Only those persons with Top Secret security clearances who are responsible for conducting declassification reviews have access to the combinations of these safes. The safes are stored in rooms with combination or deadbolt locks. Unclassified records are stored in cabinets in these same rooms.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Classification Review Unit, Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the request, and a return address.

CONTESTING RECORDS PROCEDURES:

Make all requests to contest or amend information maintained in this system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

The records in this system are generally copies of records maintained in other systems of records of the Department of Justice. Additional records consist of letters from the individuals covered by the system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 86-2697 Filed 2-6-86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage detemination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia	GA86-14 (Jan. 3, 1986)	p. 236.
Georgia	GA86-21 (Jan. 3, 1986)	p. 250.
Mississippi	MS86-21 (Jan. 3, 1986)	p. 482.
Mississippi	MS86-23 (Jan. 3, 1986)	p. 487.
Mississippi	MS86-24 (Jan. 3, 1986)	p. 490.
Pennsylvania	PA86-4 (Jan. 3, 1986)	pp. 820-822.
Pennsylvania	PA86-5 (Jan. 3, 1986)	p. 831.
Pennsylvania	PA86-14 (Jan. 3, 1986)	pp. 892, 895.
Pennsylvania	PA86-18 (Jan. 3, 1986)	pp. 914-918.
Pennsylvania	PA86-22 (Jan. 3, 1986)	pp. 941-946.
Virginia	VA86-5 (Jan. 3, 1986)	p. 1065.
Virginia	VA86-15 (Jan. 3, 1986)	p. 1089.
Listing by location (index)		pp. xxix-xlii.

Volume II

Arkansas	AR86-7 (Jan. 3, 1986)	p. 22.
Illinois	IL86-1 (Jan. 3, 1986)	pp. 62-64.
Illinois	IL86-2 (Jan. 3, 1986)	pp. 88-89.
		pp. 91-92.
Illinois	IL86-6 (Jan. 3, 1986)	p. 121.
Illinois	IL86-8 (Jan. 3, 1986)	pp. 131-132.
Illinois	IL86-11 (Jan. 3, 1986)	p. 146.
Illinois	IL86-12 (Jan. 3, 1986)	p. 152.
Illinois	IL86-13 (Jan. 3, 1986)	p. 162.
		p. 165.
Louisiana	LA86-5 (Jan. 3, 1986)	p. 363.
Nebraska	NE86-2 (Jan. 3, 1986)	pp. 621-622.
Ohio	OH86-28 (Jan. 3, 1986)	p. 752.
Texas	TX86-19 (Jan. 3, 1986)	p. 894.
Wisconsin	WI86-5 (Jan. 3, 1986)	pp. 959-961.
Wisconsin	WI86-8 (Jan. 3, 1986)	p. 972.
		pp. 974-975.

Volume III

Colorado	CO86-1 (Jan. 3, 1986)	pp. 102-105.
Oregon	OR86-1 (Jan. 3, 1986)	p. 257.
		pp. 259-260.
Washington	WA86-1 (Jan. 3, 1986)	p. 300.
		pp. 303-304.
		p. 308.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Througout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st day of January 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-2539 Filed 2-6-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-15; Exemption Application No. D-6088 et al.]

Grant of Individual Exemptions; Peterson, Thelan & Price et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Peterson, Thelan & Price, a Professional Corporation Profit Sharing Plan and Trust (the Plan), Located in San Diego, California

[Prohibited Transaction Exemption 86–15; Exemption Application No. D–6088]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain shares of common stock in Citizens Western Bank (the Bank), an unrelated party, by the Plan to Paul A. Peterson, a party in interest with respect to the Plan, provided that the Plan receives at least fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50364.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Extension of Prohibited Transaction Exemption (PTE) 82–184 for Certain Transactions Involving the Alaska Teamster-Employer Pension Trust (the Plan), Located in Anchorage, Alaska

[Prohibited Transaction Exemption 86–16; Exemption Application No. D–6184]

Exemption

The Department hereby extends, temporarily, PTE 82–184 (47 FR 52246, November 19, 1982) until May 16, 1988.

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (D) of the Code shall not apply until May 16, 1988 to the sales of certain residential units (the Units) located near Palm Springs, California, by Desert Horizons, Inc. (Desert Horizons), a wholly owned corporation of the Plan, to parties in interest to the Plan who are not fiduciaries [within the meaning of section 3(21) (A) of the Act], provided the following conditions are satisfied:

(1) (A) Every thirty days, Desert Horizons shall publish in *The Desert Sun*, a price list delineating each available Unit and the price at which it is offered for sale to the general public.

(B) For thirty days from the initial publication, no sale of any such advertised Unit shall be made to a party in interest, even if such party offers more than the advertised price.

(C) If, after thirty days from the initial publication, no non-party in interest offers to purchase the Unit, a party in interest shall become an eligible purchaser, but only at the advertised price or at a higher price.

(D) A party in interest shall not be eligible to purchase a Unit whose advertised price has been altered until the expiration of thirty days following publication at the altered price.

(E) All prospective purchasers shall complete a questionnaire indicating whether they are a party in interest with respect to the Plan.

(2) Prior to the execution of a contract for the sale of a Unit to a party in interest, Walker and Lee, Inc. serving as the independent appraiser for the Plan, shall submit to Mr. Jay D. Wahlin, CPA (Mr. Wahlin), the independent fiduciary, a letter certifying that, based on all relevant market factors, the sales price for the Unit is not less than its fair market value;

(3) No contract for sale of a Unit shall be executed until Mr. Whalin determines whether the prospective purchaser is a party in interest with respect to the Plan. Upon identification of such party, Mr. Wahlin, having access to all information and documentation that he deems necessary for an informed determination, shall evaluate and approve the proposed transaction, based on determinations made that: (i) The published advertisement procedures of condition (1) above, are fully met, and (ii) the terms and conditions of such sales are at least as equal to those that the Plan would receive in a similar transaction with an unrelated party. In the event Mr. Wahlin resigns from his position as independent fiduciary, or if his appointment is otherwise terminated, the Plan shall notify the Department's Office of Regulations and Interpretations of the name and qualifications of a prospective successor fiduciary. Appointment of such successor shall be effective thirty days after receipt of such notification, unless the Department issues a letter to the Plan explaining its objections; and

(4) The Plan or Desert Horizons shall maintain accurate records demonstrating compliance with the conditions of this exemption for all covered transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46198.

Effective Dates: This exemption is effective May 15, 1985. It will expire on May 15, 1988.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Thomas L. Donovan, M.D., Inc., Defined Benefit Pension Trust (the Plan), Located in San Diego, California

[Prohibited Transaction Exemption 86–17; Exemption Application No. D–6193]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a 3% interest in International Carbide Co. (Incarb), a limited partnership, by the Plan to Dr. Thomas L. Donovan, a disqualified person with respect to the Plan,[1] for $36,000 in cash, provided that such price is no less than the fair market value of such percentage of Incarb at the time of the sale.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50366.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Beacon Milling Company, Inc. Employee Stock Ownership Plan (the Plan), Located in Cayuga, NY

[Prohibited Transaction Exemption 86–18; Exemption Application No. D–6217]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the extension of credit to the Plan by several parties in interest, including Plan fiduciaries, in connection with the 1976 sale of stock of Beacon Milling Company, Inc. to the Plan.

For a more complete statement of the facts and representations supporting the

[1] Since Dr. Donovan is the sole stockholder of Thomas L. Donovan, M.D., Inc. and the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50366.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Pension Plan for the Employees of J.J. Dorbel Corporation (the Plan), Located in Riviera Beach, Florida

[Prohibited Transaction Exemption 86–19; Exemption Application No. D–6248]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an undivided half interest (the Interest), in certain real property by the Plan to the William R. Hibel Revocable Trust, the trustee and grantor of which is one of the trustees and administrators of the Plan and a major owner of the J.J. Dorbel Corporation, the employer of the Plan's participants, provided the sales price is not less than the fair market value of the Interest on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50367.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Avenue T.V. Cable Service, Inc., Profit sharing Retirement Plan (the Plan), Located in Oxnard, CA

[Prohibited Transaction Exemption 85–20; Exemption Application No. D–6272]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of improved real property located at 1940 East Main Street, Ventura, Calfornia, for $90,000 by the Plan to Avenue T.V. Cable Service, Inc., provided that this amount is not less than the fair market value of the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50368.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

John P. Picone, Inc. Employee Retirement Trust (the Plan), Located in Larwence, New York

[Prohibited Transaction Exemption 86–21; Exemption Application No. D–6281]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuation of a loan (the Loan) by the Plan to Sussex Realty Company, whose partners are officers and/or shareholders of the employer of Plan participants, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party, and provided, further, that all excise taxes due on prohibited transactions relating to the Loan prior to the effective date shown below are paid within 60 days of the date of this grant notice.

Effective Date: The exemption is effective as of April 30, 1985, the date Mr. Leonard Lustig, the independent trustee with respect to the Loan continuation, determined that the Loan continuation is in the best interest of the Plan participants and beneficiaries.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50369.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Chase Manhattan Bank, N.A. (Chase), Located in New York, NY

[Prohibited Transaction Exemption 86–22; Exemption Application No. 6265]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the interaccount sale of publicly traded common stocks (the Stocks) from the Chase Bank Inter-Mediate Capitalization Fund to the Chase Bank Special Growth Fund, which are collective investment funds managed by Chase, provided that the price of the Stocks are their fair market value as of the date of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50370.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduiciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–2763 Filed 2–6–86; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Delegation of Award-Approval Authority From the National Science Board to NSF Director

AGENCY: National Science Foundation.

ACTION: Notice of Delegation of Award-Approval Authority from the National Science Board to the Director of the National Science Foundation.

SUMMARY: This notice sets forth a delegation of authority from the National Science Board to the Director of the National Science Foundation that was adopted by the Board on January 17, 1986. This delegation is required by section 5(e)(1) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1864(e)(1)). It enables the Director to exercise the authority provided by section 11(c) of the NSF Act (42 U.S.C. 1870(c)) to enter into contracts, grants, and other arrangements for such scientific and engineering activities as the Foundation deems necessary for the purposes of the Act. Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)).

DATE: This delegation of authority was effective on January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Ubois, Executive Officer, National Science Board, National Science Foundation, Washington, DC 20550, 202–357–9582 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The following is the delegation:

(1) The Director of the National Science Foundation shall make no award involving a total commitment of more than six million dollars or more than one and one-half million dollars in any one year without the prior approval of the National Science Board, except for:

a. Any award for a new project or facility where the Board has approved a project development plan and has not specifically required approval of the award; or

b. Any continuing project, facility, or logistics-support arrangement listed in the Exemption List attached to this resolution. Such Exemption List is to be compiled, at least annually, for each calendar year for NSB approval in November of the preceding calendar year.

(2) Paragraph (1)a. does not apply, however, if the award amounts would exceed the corresponding amounts specified in the budget accompanying the development plan by either (i) more than eight percent times the number of full years since the initial award for that project or facility, or (ii) more than twenty-four percent.

(3) Except as provided in paragraphs (1) and (2) or by specific resolution of the National Science Board, the Board hereby delegates to the Director authority to make any award within an established program of the Foundation currently approved by the Board.

(4) Except as provided in paragraph (2) or by specific resolution of the National Science Board, when the Board approves the award of a specific amount of funds, the Director may subsequently amend the award to commit additional sums, not to exceed ten percent of the amount specified, or to change the expiration date of the award.

(5) This resolution is effective for two years and supersedes and replaces the resolutions of the National Science Board on this subject adopted in July 1968 and amended in February 1969, February 1974, and April 1977.

The following is the Exemption List attached to the delegation resolution:

1986 NSB Award Review Exemptions

I. Astronomical, Atmospheric, Earth, and Ocean Sciences

A. Astronomy

1. National Optical Astronomy Observatories/1987 Program Plan

2. National Radio Astronomy Observatory/1987 Program Plan

B. Ocean Sciences

1. Woods Hole Oceanographic Institution/Support for ALVIN/1987–1989

Woods Hole Oceanographic Institution/1987 Operation of Oceanographic Research Vessels at Academic Institutions

C. Polar Programs

1. U.S. Navy, 1987 Logistical Support for the U.S. Antarctic Program

2. U.S. Coast Guard, 1987 Icebreaker Support

II. Mathematical and Physical Sciences

1. University of Colorado, Joint Institute for Laboratory Physics, 5 years

2. University of Illinois, Nuclear Physics Laboratory, 3 years

3. Michigan State University, National Superconducting Cyclotron Laboratory, 3 years

4. Columbia University, High Energy Physics Laboratory, 3 years

5. State University of New York at Stony Brook, Nuclear Physics Laboratory, 3 years

III. Scientific, Technological, and International Affairs—International Programs

RFP and Associated Awards for Support of Invitational Travel, 3 years

IV. Science and Engineering Education—Research Career Development

1. National Academy of Sciences, Evaluation of Applications in the NSF Graduate Fellowship and Minority Graduate Fellowship Programs, 3 years

2. Combined Graduate and Minority Graduate Fellowship Support Grants to Affiliated Institutions Exceeding $1,500,000 Annually, 3 years.

As stated in its final section, this delegation replaces earlier ones on the same subject. This delegation, like those preceding it, is a matter of internal agency management and therefore not subject to Executive Order 12291 of February 17, 1981 (3 CFR 1981 Comp., p. 127). Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)), which was enacted by section 109(b) of the National Science Foundation Authorization Act, Fiscal Year 1986 (99 Stat. 889; Pub. L. 99–159).

Thomas Ubois,

Executive Officer.

January 31, 1986.

[FR Doc. 86–2691 Filed 2–6–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443A]

Public Service Company of New Hampshire et al.; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Seabrook Nuclear Station. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission had delegated the authority to make the

"significant change" finding to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Seabrook 1 construction permit to Public Service Company of New Hampshire, et al., the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit reivew are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New England, the events relevant to the Seabrook construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

The conclusion of the staff's analysis is as follows:

"Public Service Company of New Hampshire (PSNH), on behalf of itself and all other owners (applicants), has applied for an operating license for the Seabrook 1 nuclear unit. Pursuant to the Commission's "significant change" criteria, the staff has conducted an antitrust analysis of the applicants' activities and proposed activities since the Seabrook construction permit (CP) antitrust review was completed in January 1974. In performing this analysis, the staff has examined: (1) Activities undertaken by the applicants with respect to bulk power services, including coordination, transmission, and wholesale services, (2) antitrust issues raised in two separate federal court proceedings involving New England Power Company (NEPCO) and Connecticut Light and Power Company (CLP), and (3) the New England Power Pool (NEPOOL) which governs bulk power interrelationships among nearly all New England utilities.

"In the staff's view, none of the new and/or revised bulk arrangements entered into by any of the applicants present any significant consequences of an antitrust nature. Such arrangements, in fact, appear to promote access to a wide range of alternative for all New England utilities, regardless of size or type of ownership.

"The antitrust complaints against NEPCO were mitigated after a settlement among the parties permitted the Town of Norwood to switch wholesale suppliers. A district Court decision dismissing all antitrust complaints against CLP was affirmed by an Appeals Court on all but two counts. Those two counts both dealt with price-squeeze and were remanded to the lower court for reconsideration. Staff notes further that the Federal Energy Regulatory Commission (FERC) is required to explicitly consider price-squeeze issues when raised with regard to new rate filings. Consequently, staff has concluded that the price-squeeze issues do not warrant Commission remedy and therefore do not represent "significant changes" under the Commission's criteria.

"Finally, NEPOOL, which was only two years old at the time when the CP antitrust review was performed, appears to have evolved into a framework ensuring access to reliable and economical bulk power supply for all New England utilities. Two provisions of the original pool agreement were found to be discriminatory against smaller utilities and have since been removed. Further, because Seabrook 1 has been designated as a pool-planned unit, access to Seabrook 1 over pool transmission facilities of members is guaranteed for all participants under the term of NEPOOL.

"Thus, the changes in the activities of all of the applicants since the completion of the Seabrook 1 construction permit antitrust review do not represent significant changes of an antitrust nature and, therefore, do not require a further, formal antitrust review at the operating license stage."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of Seabrook Station, Unit 1 is not required.

Signed on January 22, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-2739 Filed 2-6-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271; License Nos. DPR-28 and EA 85-105]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Order Imposing a Civil Monetary Penalty

I

Vermont Yankee Nuclear Power Corporation, Brattleboro, Vermont 05380, (licensee) is the holder of License No. DPR-28 issued by the Nuclear Regulatory Commission (Commission/NRC) which authorizes the licensee to operate the Vermont Yankee Nuclear Power Station, Vernon, Vermont, in accordance with the conditions specified therein.

II

On August 9, 1985 an NRC inspection was conducted to review the circumstances associated with an event involving an unplanned radiation exposure received by a health physics technician while he was performing a radiological survey in the Traversing Incore Probe (TIP) room. The inspection identified that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 22, 1985. The Notice states the nature of the violation, the provision of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of civil penalty proposed for the violation. Answers dated November 25 and 26, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty were received from the licensee.

III

After consideration of the answers received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein and as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order

shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 3rd day of February 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

Although the licensee essentially admits the violation, its November 25 and 26, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalty dated October 22, 1985 request mitigation of the civil penalty and provide the reasons why the licensee believes mitigation of the penalty is appropriate. Provided below are (1) a restatement of the violation, (2) the licensee's assertions in support of mitigation, and (3) the NRC response to each of the licensee's assertions.

Restatement of Violation

10 CFR 19.12 requires that all individuals working in or frequenting any portion of a restricted area shall be kept informed of the storage, transfer, or use of radioactive materials or of radiation and shall be instructed in the health protection problems associated with exposure to such radiation and in precautions or procedures to minimize exposure.

Contrary to the above, on August 8, 1985, a Chemistry-HP Technician (technician) was given approval by HP supervision to enter a restricted area (the TIP room area where radiation levels of 1000 R/hr or higher existed) to perform surveys where there was a known potential for unusually high exposure rates, and the technician was not instructed by HP supervision in precautions to take and procedures to follow to minimize exposure. The technician was not instructed as to the location to make an initial exposure rate measurement and a level at which to terminate the survey or provided appropriate alternative instructions.

This is a Severity Level III violation (Supplement IV).

Civil Penalty—$50,000.

Licensee Assertion

The licensee acknowledges the statement made in the NRC October 22, 1985 letter that an exposure in excess of regulatory limits could have occurred because of the inexperience of the HP technician. However, the licensee contends that the potential for a serious overexposure was minimized because before the entry the HP technician had: (1) Discussed with the Plant Health Physicist the radiological concerns associated with the TIP room; (2) reviewed the administrative/procedural controls in place for TIP room entries; (3) reviewed the procedure for performing the survey, including the related dose map; (4) been instructed in the specific goal of the survey; (5) requested and received backup assistance from two auxiliary operations; and (6) discussed the entry with his supervisor and the supervisor's assistant.

NRC Evaluation

The NRC acknowledges that the licensee took certain actions, as desribed in its responses, before the TIP room entry. However, several of the licensee's actions were not adequate to minimize the potential for an overexposure. The technician's discussions with supervision (items 1 and 6 above) were very brief and apparently no specific precautionary instructions were given regarding minimizing exposure. The dose maps (item 3) that were reviewed were potentially misleading to an inexperienced technician as they indicated that exposure rates should be very low. With respect to item 4, it is not clear whether the purpose of the suvey was to establish dose rates for a radiation work permit for that shift or to establish initial dose rates in the room for re-entry during subsequent shifts. Even at the enforcement conference, licensee management expressed uncertainty over the purpose of the entry and survey.

Further, the other actions cited by the licensee are normally expected before the performance of such a task. That is, the NRC would expect an individual to understand the task to be performed, review related procedures and controls, and also have discussions with appropriate supervisory personnel to provide adequate protection during performance of these tasks. In this specific case, these actions were not sufficient to provide adequate protection to the health physicis technician during the performance of the TIP room survey because the individual did not know or understand the location at which to make an initial exposure rate measurement or the level at which to terminate the survey. Further, the technician did not have any experience working in radiation fields of the magnitude encountered in the TIP room. This lack of adequate instruction and experience level was evident in that, although the technician's survey meter went offscale during the survey indicating radiation dose rates in excess of 1000 R/hr, he did not exit the room until one of the auxiliary operations told him to "back out of the room." For all of the above reasons, the NRC maintains that the potential for a serious exposure was not minimized. Therefore, the licensee's assertion does not provide a basis for mitigation of the civil penalty.

Licensee's Assertion

The NRC's October 22, 1985 letter transmitting the Notice stated that on at least two occasions NRC inspectors had informed the licensee staff of the need for formal, written, and approved procedures for personnel entry into the TIP room, yet such a procedure was not prepared. The licensee, however, states that to the best of its knowledge, neither conversation resulted in any concerns being expressed regarding the adequacy of administrative controls governing TIP room access.

NRC Evaluation

The licensee states in its November 26, 1985 response that licensee personnel do not recall any discussion during the two conversations with NRC representativs regarding the adequacy of its administrative controls governing TIP room access. However, the licensee does admit in its response that during one conversation the Region I inspector cautioned that if certain experienced staff members left, certain procedural and administrative controls would likely need to be enhanced if the new staff members were less experienced personnel. During this conversation, the inspector placed emphasis on the TIP room and other high-radiation areas.

The HP technician in this case was admittedly inexperienced, and the experienced Radiation Protection Manager was no longer employed by the licensee at the time of the NRC conversation. Nonetheless, the procedures for entry to high-radiation areas in general and the TIP room in particular were not sufficiently enhanced to ensure that the technician, as the responsible individual performing this survey, was knowledgeable of the location at which to make an initial exposure rate measurement and of the level at which to terminate the survey.

In addition, the licensee also was informed of the NRC concern about procedural controls in high-radiation areas via several information notices and a circular (Information Notice 84–19 dated March 21, 1984, Information Notice 82–51 dated December 26, 1982, and Circular Notice 76–03 dated September 13, 1976). These notices emphasized the importance of ensuring that radiation protection procedures and radiation protection training and retraining programs specifically address the matter of control and access to such areas and initiate appropriate retraining of all plant personnel. They also recommended that entry be allowed only after appropriate management review and approval. Further, they recommended periodic audit of these actions to ensure their continued effectiveness. Many of the actions noted in the Notices are similar to those in the Confirmatory Action Letter issued by the NRC to Vermont Yankee on September 9, 1985. In addition, there have been a number of escalated enforcement actions for similar violations at other plants of which the licensee should have been aware. A purpose of publishing escalated enforcement actions in NUREG–0940 and Orders Imposing Civil Penalties in the **Federal Register** is to give licensees notice of other enforcement actions which may bear on their own operations. (See Vol. 4, No. 1, p. I.A–94 and Vol. 3, No. 2, p. I.A–1 of NUREG–0940.)

Accordingly, the NRC maintains that the licensee had prior notice of potential problems associated with TIP rooms. Therefore, a basis would have existed for an increase in the civil penalty amount had it not been for the licensee's reporting of this event and prompt short-term corrective actions.

Licensee's Assertion

The licensee claims that at the time of the Enforcement Conference on September 5, 1985, significant efforts had been taken to assess the specific causes of the incident and develop long-term proposed corrective actions. In particular, on the day (August 9) following the event, the Plant Manager directed the Chemistry and HP technician to generate a Plant Information Report (PIR) so that the event could be analyzed and recommended long-long corrective action could be provided. The final PIR, which was issued approximately 6 weeks later on September 17, 1985, proposed six long-term corrective actions. On September 21, 1985 the Plant Manager dispositioned the long-term recommendations. The licensee contends that the development and finalization of this long-term corrective action program occurred in a prudent and timely manner.

NRC Evaluation

The NRC maintains that the long-term actions taken by the licensee were not particularly prompt in that some of the actions could and should have been in place at the time of the enforcement conference, namely, an upgrade of the procedures for entry into locked high-radiation areas in general, and the TIP room in particular. These items were not provided by the licensee at the Enforcement Conference and appeared to have been considered only after the Enforcement Conference on September 5, 1985 and the Region I Confirmatory Action Letter (CAL) issued on September 9, 1985. In addition, four of the six items in the licensee's PIR simply proposed evaluation of certain aspects of the program rather than describing specific actions taken or necessary to correct deficiencies and improve the program. It was not until September 21, 1985 after the Enforcement Conference and issuance of the Confirmatory Action Letter (CAL) that the licensee committed to take these actions.

For these reasons, the NRC maintains that the licensee's long-term actions were not unusually prompt and do not provide an adequate basis for mitigation of the civil penalty.

NRC Conclusion

After consideration of the answers received and the licensee's statements of fact, explanation, and arguments for mitigation of the proposed civil penalty, the staff concludes that any adjustment to the civil penalty amount is inappropriate. Therefore, the proposed $50,000 civil penalty should be imposed.

[FR Doc. 86–2740 Filed 2–6–86; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Babcock and Wilcox Water Reactors; Meeting

The ACRS Subcommittee on Babcock and Wilcox (B&W) Water Reactors will hold a meeting on February 25, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 25, 1986—8:30 A.M. Until the Conclusion of Business

The Subcommittee will consider the implications of operating experience on the adequacy of B&W plant designs, including consideration of the severe overcooling event at Rancho Seco on October 2, 1985. The Subcommittee may also review the NRC Staff's plans to reassess the long-term safety of B&W reactors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the schedule meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–2761 Filed 2–6–86; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on February 27 and 28, Room 1046, 1717 H Street, NW., Washington, DC.

To the extent practical the meeting will be open to public attendance.

However, portions of the meeting may be closed to discuss industry proprietary information.

The agenda for subject meeting shall be as follows:

Thursday, February 27, 1986—8:30 A.M. Until the Conclusion of Business

Friday, February 28, 1986—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review, but not necessarily be limited to, the following items: (1) NUREG–0313, Revision 2, entitled, "Technical Report on Material Selection and Processing Guidelines for BWR Coolant Pressure Boundary Piping," and (2) Regulatory Guide XXX entitled, "Guide for License Preparation and NRC Staff Review of Plant Specific Analysis Required by PTS Rule." The Subcommittee will also hear a status report of the proposed broad rule to modify GDC–4 of 10 CFR Part 50 (the leak-before-break broad scope rule is applicable to all LWR high energy piping systems).

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics of be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–2762 Filed 2–6–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–455]

Texas Utilities Electric Co. et al. Comanche Peak Steam Electric Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR–126 issued to Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station Unit No. 1 (the facility) located on Applicants' site in Somervell County, Texas..

Environmental Assessment

Identification of Proposed Action: The proposed action would amend the construction permit by extending the latest construction completion date to August 1, 1988. The proposed action is in response to Applicants' request dated January 29, 1986, as supplemented February 4, 1986.

The Need for the Proposed Action: The proposed action is needed because the construction of the facility is not yet fully completed. The Applicants state that, although construction on Comanche Peak Unit 1 was essentially completed early in 1985, major efforts to reinspect and reanalyze various structures, systems, and components is currently underway. These efforts are being conducted by the Applicants' Comanche Peak Response Team to verify both design and construction adequacy as well as to respond to numerous issues raised in the operating license proceeding, by the NRC's Technical Review Team, and by other sources. This activity has been ongoing since the fall of 1984. The Applicants anticipate that it will not be complete before the second quarter of 1986. In addition, the operating license hearings are not yet completed and will involve additional time for which the construction permit will be needed.

Environmental Impacts of the Proposed Action: The environmental impacts associated with construction of the facility have been previously discussed and evaluated in the NRC staff's Final Environmental Statement (FES) issued in June 1974 for the construction permit stage which covered construction of two units. Unit 2 is not affected by the proposed action.

Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Since the construction of the facility is essentially 100% complete, most of the construction impacts discussed in the FES have already occurred: construction-related activities have disturbed about 400 acres of rangeland, the Squaw Creek Reservoir has been built, as have transmission lines and corridors, and a railroad spur. These activities and their impacts occurred earlier and are not affected by this proposed action.

The reinspection and rework that may be required will not have any significant environmental impact. The impacts associated with the work are equivalent to those of a maintenance or repair program. This activity will all take place within the facility and will not result in impacts to previously undisturbed areas.

There are no new significant impacts associated with this extension. There are, however, impacts that would continue in order to complete plant construction in addition to rework discussed above. These are community and traffic impacts, and continued groundwater withdrawal.

Community impacts from continued construction would be similar to those impacts previously assessed. The total number of workers on-site for both units at the present time (about 5300) is about the same (although somewhat smaller) as during earlier peak construction periods. The number of workers specifically assigned to Unit 1 is small compared with the number associated with the completion of Unit 2. The number of workers on-site will decline as the reinspection program for Unit 1 is completed during 1986. Continuing construction does not involve community impacts different from those previously considered or significantly greater than those previously considered or experienced.

The construction permits for Comanche Peak Units 1 and 2 limit groundwater usage to 40 gpm on an

annual average basis for the site. Usage for 1984 and 1985 has averaged less than half this amount for both units. In fact, most construction water is being supplied from the Squaw Creek Reservoir, thus reducing the usage of groundwater. For these reasons, we conclude that continued construction will not have a significant effect on groundwater.

Based on the foregoing, the NRC staff concluded that the proposed extension of the construction permit would have no significant environment impact. Since this action would only extend the period of construction as described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement.

Alternatives Considered: A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicants would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is essentially completed. Therefore, this alternative is rejected.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the FES for Comanche Peak.

Agencies and Persons Contacted: The NRC staff reviewed the Applicants' request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated January 29, 1986, as supplemented February 4, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room at the Somervell County Public Library, Glen Rose, Texas 76403.

Dated at Bethesda, Maryland, this 5th day of February 1986.

For The Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate No. 5, Division of PWR Licensing–A.

[FR Doc. 86–2891 Filed 2–6–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee Review; Review and Solicitation of Public Comment Regarding the Proposed Modification of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) to Remove Certain Chemical Mixtures Containing Ethanol

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review concerning the removal of certain chemical mixtures containing ethanol under TSUS 407.16pt, TSUS 407.09pt, TSUS 413.51pt and TSUS 432.25pt of the Tariff Schedules of the United States Annotated from the list of products currently eligible for duty-free treatment under the U.S. Generalized System of Preferences (19 U.S.C. 2461–2465). In the event that the TPSC should decide to recommend that the President remove these products from the GSP, it reserves the right to recommend that this action be effective with regard to any product that has not been imported and entered, or withdrawn from warehouse for consumption, before the date of the President's decision.

Anyone interested in this matter is requested to provide written comments to the TPSC regarding removal of these products from the GSP not later than March 7, 1986. A public hearing on the proposed modification will not be scheduled unless a request for such hearing is received no later than close of business February 17, 1986. If a hearing is requested, it will be held on February 27, 1986 at 10:00 am at the Office of the United States Trade Representative, 600 17th Street, Washington, DC in Room 403.

All submissions should conform to 15 CFR 2003.2 and be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee. Information submitted in connection with the proposed modification will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the proposed modification should be addressed to the GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 517, Washington, DC 20506. Questions may be directed to the GSP Information Center at (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–2892 Filed 2–6–86; 9:40 am]

BILLING CODE 3190-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2228]

Declaration of Disaster Loan Area; Texas

The County of Montgomery and the adjacent County of Waller in the State of Texas constitute a disaster loan area because of damage caused by heavy rains and flooding on November 24, 1985. Applications for loans for physical damage may be filed until the close of business on April 4, 1986, and for economic injury until September 2, 1986, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222806 for physical damage and for economic injury the number is 637100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 3, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-2678 Filed 2-6-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0162]

Detroit Metropolitan Small Business Investment Co.; Surrender of License

Notice is hereby given that Detroit Metropolitan Small Business Investment Company, 150 Michigan Avenue, Detroit, Michigan 48226 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Detroit Metropolitan Small Business Investment Company was licensed by the Small Business Administration on August 6, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 27, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 30, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-2679 Filed 2-6-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-86-2]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 18, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 3, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24146-2	South Pacific Island Airways	14 CFR 91.303	To allow petitioner to operate one Stage 1 B707-323B aircraft until hush kits are installed.

[FR Doc. 86-2665 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-86-3]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 27, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 4, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23867	Executive Helicopters	14 CFR 141.41(a)(1)	Amendment to Exemption No. 3966 to allow (III) petitioner to utilize the HTS-100 Primary Helicopter Training system in their Part 141 Helicopter Pilot School, No. PC-205-2. The amendment would increase the maximum flight training credits up to 5 hours.
010CE	Bapco Engineering	§§ 3.430 & 3.446 of the Civil Air Regulations in effect on May 15, 1956.	To permit the Supplemental Type Certification of Cessna Model 100 and 200 Series airplanes without interconnecting the fuel tank airspaces of tanks supplying fuel simultaneously to one engine.
24884	Ramon Navarro	14 CFR 61.3(3)	To allow petitioner to act as a required pilot flight crewmember, without a current and valid medical certificate, for the purpose of acting as a safety pilot, during simulated instrument flight conditions, when instructing airplane instrument students, when the student holds a private or commercial pilot certificate with the appropriate category and class ratings, and is current and qualified in that aircraft.
24839	Burke & Burke	14 CFR 45.29(3)	To permit petitioner to affix a 6-inch "N" number on the fuselage or the tail rotor boom of a 1974 Hughes 500C helicopter (N3698).
24895	Air Wisconsin, Inc.	14 CFR 93.123	To permit petitioner to use commuter slots to operate aircraft with a maximum of one hundred seats to points within a 250-mile radius of Chicago O'Hare International Airport to the extent such service was provided on December 16, 1985.
22622	T.B.M., Inc., & Butler Aircraft (MOORE)	14 CFR 91.45	To allow petitioner to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC-6, DC-7, and DC-7B aircraft, without obtaining a special flight permit for each flight.
23907	Bolivar Aviation	14 CFR 141.65	To allow petitioner to continue to have examining authority for written tests only for Flight Instructor, Instrument Flight Instructor, and Airline Transport Pilot Certificates.
21987	Texas Department of Public Safety	14 CFR 91.65(b), 91.70(b), 91.73(a), 91.79(c), 91.85(b), & 91.109(a).	To permit petitioner to conduct certain law enforcement flight operations in close proximity to suspect aircraft; in airport traffic areas at speeds greater than the authorized limits; without operating the aircrafts position lights; at less than 500 feet above the surface over other than congested areas; in airport traffic areas other than to land or take off from an airport in that area; and/or in deviation from prescribed VFR cruising altitudes.
24671	Bell Helicopter	14 CFR 21.321(a)(2)	To permit petitioner to apply for a delegation option authorization (DOA), for type, production, and airworthiness certification of its transport category helicopter. Section 21.231(a)(2) allows DOA for normal category rotorcraft only, which precludes its use for transport category rotorcraft. Petitioner currently holds type certificates and production certificates for 32 normal category and 11 transport category rotorcraft.
23912	Braniff	14 CFR 93.123, 93.125, & 93.129	To permit petitioner to conduct a maximum of four daily operations at Washington National Airport.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
20771	US Air	14 CFR 91.307	To amend Exemption No. 3080d to add 14 BAC 1-11 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 7 BAC 1-111 and 30 DC-9 aircraft. *Granted Dec. 31, 1984.*
24760	Diane C. Heckman	14 CFR 65.5(e)	To allow petitioner to apply for dispatchers certificate before reaching her 23rd birthday. Denied Jan. 14, 1986.
19651	Gates Leerjet Corp	14 CFR 21.197	Extension of Exemption 2981 to permit the issuance of special flight permits to petitioner for ferrying aircraft, for the purpose of completion, between Wichita, KS, and Tucson, AZ, subject to certain conditions and limitations. *Granted Jan. 2, 1986.*
23753	Saudi Arabian Airlines Corporation	14 CFR 61.2	To amend Exemption 3923 to permit petitioners pilots to be issued a U.S. pilot certificate with a type rating for any of the following aircraft: B-747, B-737, B-707, L-1011, and A300-600. *Granted Jan. 6, 1986.*
20818	Ransome Airlines	14 CFR 135.429(a) and 135.435	To allow petitioner to continue to use foreign repair stations not holding appropriate U.S. certificates to overhaul and repair engines, aircraft components, accessories, and propellers. *Granted Jan. 3, 1986.*
24769	Gerber Products Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24788	Weyerhaeuser Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24785	Southern California Edison Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24261	Type Rating Training	14 CFR 63.37(b)(4) and Part 63 APP. C	To allow petitioner to substitute training in simulators and approved training devices for actual flight hours and allow a reduction in classroom hours. *Denied Jan. 8, 1986.*
24757	TACA International Airlines	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 9, 1986.*
23713	SimuFlite Training	14 CFR 121.407(a)(1)(i) & Portions of Part 121, Appendix A.	To allow petitioner, even though not a Part 121 certificate holder, to obtain approval of Phase II simulators; and to obtain approval of an Advanced Simulation Training Program. *Granted Jan. 10, 1986.*
24833	Command Airways	14 CFR 121.411 & 121.413(b)	To allow petitioner to utilize certain Aerospatiale, G.I.E. Avion de Transport Regional (ATR) pilots for training, in France, of certain of petitioner's check airmen, flight instructors, and flight crewmembers in the ATR-42 type aircraft. *Granted Jan. 10, 1986.*
24796	Tele/Com' Air Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 9, 1986.*
24791	Stephens, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 9, 1986.*
2392*	Flight Safety Int'l	14 CFR 61.57	To allow pilots contracting with petitioner to use approved Phase I simulators to meet the takeoffs and landings requirements. *Granted Jan. 10, 1986.*
24644	Federal Express Corporation	14 CFR 121.623 & 121.643	To allow petitioner to operate under domestic air carrier rules regarding alternate airport requirements and fuel reserves. *Denied Jan. 15, 1986.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
24647	Basler Flight Service, Inc	14 CFR 121.9	To allow petitioner to operate under, SFAR 38-2 and Part 121 of the FAR, certain DC-3 non-transport category airplanes having a maximum payload capacity of 7,500 pounds or less. *Withdrawn Dec. 19 1985.*
23937	Federal Express Corp	14 CFR 121.583	To permit employees of petitioner's Canadian licensee, Cansica Inc., to fly aboard petitioner's all-cargo aircraft using flight observer and courier seats. *Withdrawn Nov. 26, 1985.*
24724	Cargolux Airlines	14 CFR 21.181	To permit petitioner to operate B-747 aircraft utilizing an FAA approved minimum equipment list. *Granted Jan. 23, 1986.*
24345	VARIG, S.A	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended Partial Grant Jan. 13, 1986.*
24639	Florida West Airlines	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended Grant Dec. 9, 1985.*
24145-1	Dominicana Da Aviacion	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Grant Dec. 12, 1985.*
24384	Pan Aviation	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Partial Grant Dec. 12, 1985.*
24224	Transprasil S.A. Linhas Aereas	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Partial Grant Dec. 12, 1985.*
21991	United Airlines	14 CFR 63.39(b)(2) & 121.425(a)(2)(i)	Extension of Exemption 3463 to allow petitioner its flight engineers and flight engineer applicants to continue to use FAA-approved pictorial means and an approved simulator instead of a static airplane for demonstrating satisfactory performance of a preflight inspection and flight engineer duties. *Granted Jan. 23, 1986.*
24842	Simmons Airlines	14 CFR 121.411 & 121.413	To allow petitioner to utilize certain Aerospatiale G.I.E. Avions de Transport Regional (ATR) pilots for the training of a selected number of Simmons' check airmen, flight instructors, and flight crewmembers in the ATR-42 type aircraft. The Training will be conducted in France, and the ATR pilots will hold pilot and medical certificates issued by France. *Granted Jan. 24, 1986.*
20853	United Airlines, Inc	14 CFR 121.351(a)	To permit petitioner to continue to operate its aircraft in extended overwater operations over the Gulf of Mexico with one high frequency (HF) communication radio system and one long range navigation system (LRNS). *Partial Grant Jan. 29, 1986.*
24770	Flightsafety Int'l	14 CFR 61.57(a)(1), 61.58(c)	To permit trainees of petitioner to complete certain proficiency checks and flight reviews in its Sikorsky S-76 training device and Bell 222 simulator. *Granted Jan. 28, 1986.*
24862	Continental Airlines, Inc	14 CFR 121.411(a)(1), (a)(2), (a)(3), (a)(6), 121.411(b); & 121.413(b), (c) & (d).	To permit petitioner to utilize certain qualified pilots and flight engineers from Aeroformation (a joint venture of Airbus Industrie and Flightsafety International) for the purpose of training petitioner's initial cadre of pilots and flight engineers in the Airbus Industrie A300-B4-200 (A300) type airplane without those Aeroformation airmen holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted Jan. 8, 1986.*
24783	Federal Prison Camp Big Spring	14 CFR 63.37	To permit petitioner to administer airmen written examinations to certain inmates even though the applicants do not hold a current commercial pilot certificate with an instrument rating. *Denied Jan. 9, 1986.*
22286	Finnair Oy	14 CFR Portions of Part 21	To permit petitioner to obtain a special flight permit with continuing authorization for DC-10-30 aircraft N345HC. To permit petitioner to operate aircraft N345HC when it does not meet all applicable airworthiness requirements but is capable of safe flight for the purpose of flying the aircraft to a base where repairs, alterations, or maintenance may be performed. *Granted Jan. 9, 1986.*
24819	United Air Lines	14 CFR Appendix H	To allow petitioner to conduct Phase IIA training and checking utilizing a Phase I simulator to 3½ years from the date such approval was received from the Federal Aviation Administration (FAA), but not later than July 31, 1986. Petitioner requests Phase IIA training and checking credits for a L-1011-500 Phase I simulator until June 30, 1988. *Partial Grant Jan. 9, 1986.*

[FR Doc. 86-2710 Filed 2-6-86; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket Number HS-86-1]

Petition for Exemption From the Hours of Service Act; Lenawee County Railroad Co., Inc.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Lenawee County Railroad Company, Inc. (LCRC) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than fifteen employees who are subject to the statute to seek an exemption from the twelve hour limitation.

The LCRC seeks this exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before March 27, 1986, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, Washington, DC 20590.

Issued in Washington, DC, on February 3, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-2754 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

[T.D. 86-17]

Leaded Naphtha; Change of Tariff Classification

AGENCY: Customs Service, Treasury.

ACTION: Change of Practice.

SUMMARY: Customs has determined that a uniform and established practice exists to classify certain imported leaded naphtha for tariff purposes as motor fuel. Because this petroleum product, as imported, is not chiefly used as motor fuel, it cannot be classified as such, nor can it be classified as naphtha in view of the added lead content. Accordingly, Customs believes the classification practice is clearly wrong. The most appropriate tariff provision for the classification of leaded naphtha is for mixtures not specifically provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part form petroleum, shale oil, or natural gas.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after May 8, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC (202-566-8181).

SUPPLEMENTARY INFORMATION: .

Background

In Treasury Decision 83-173, dated August 17, 1983, and published in the Customs Bulletin of September 7, 1983, new standards were established to aid Customs in classifying petroleum products which are chiefly used as motor fuels under the provision for motor fuel in item 475.25, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). It was further stated in T.D. 83-173 that classification under item 475.25, TSUS, would be indicated if the imported petroleum product met the current American Society for Testing and Materials (ASTM) standards set out in D439 for automotive gasoline, D1655 for aviation turbine fuels, or D910 for aviation gasoline.

T.D. 83-173 revoked T.D. 66-23(13) dated January 19, 1966, which set out critical properties for petroleum products chiefly used as motor fuels at that time. Although this guide was widely used both by Customs and importers for the classification of products claimed to be motor fuel, it had long been recognized that the standards set out in T.D. 66-23(13) were outmoded and required updating. Nonetheless, it should be noted that T.D. 66-23(13) itself stated that the critical properties listed were to be used only as a guide and that it was intended that to be classified as a motor fuel, a product should meet the requirements of Headnote 2(b), Part 10, Schedule 4, TSUS.

Despite this requirement, which has been recognized by the court in *United States* v. *Exxon Corp.*, 607 F.2d 985 (1979), C.A.D. 1233, Customs found that reliance has been placed on T.D. 66-23(13) to establish whether a particular petroleum importation was classified as motor fuel in item 475.25, TSUS. In view of the change in the critical properties of gasoline in the intervening years, as necessitated by the higher performance engines developed, the standards for automotive fuel as stated in T.S. 66-23(13) are no longer valid. Petroleum products which meet the criteria set out in T.D. 66-23(13) cannot be said to be chiefly used as motor fuel, as imported.

Customs has learned that petroleum products entered as motor fuel and which met the standards of T.D. 66-23(13) generally were not intended to be used as gasoline, as imported, but were used as blending stock; that is, they were products which were made into finished gasoline subsequent to importation. The gasoline blending industry imports hydrocarbon distillate mixtures, such as low octane, off specification motor gasoline, petroleum naphtha, leaded naphtha and similar products for the purpose of blending them into a final product which meets the requirements of modern gasoline engines.

A review of entries made over the past few years shows that, based on liquidations, a uniform and established practice exists to classify gasoline blendstock, particularly leaded naphtha, which meets the criteria set out in T.D. 66-23(13), as motor fuel in item 475.25, TSUS.

On the basis of the above information, Customs determined that the established and uniform practice of classifying leaded naphtha, which met the criteria set out in T.D. 66-23(13), as motor fuel in item 475.25, TSUS, is clearly wrong. Leaded naphtha cannot be classified as naphtha in item 475.35, TSUS, in view of the added lead content.

Accordingly, Customs published a notice in the **Federal Register** on February 27, 1985 (50 FR 7929), soliciting public comments on the proposed change of practice and starting the most appropriate provision for classification is that for mixitures not specially provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas, in item 432.10, TSUS. The current rate of duty for articles classified under item 432.10, TSUS, is 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component material with the highest duty rate would be tetraethyl lead in item. 429.70, TSUS, with a current duty rate of 9.8 percent ad valorem.

The notice stated that it pertained to certain leaded naphtha only and not to petroleum naphtha classifiable in item 475.35, TSUS, or catalytic naphtha containing by weight over 5 percent synthetically produced dutiable benzenoids, classifiable as a benzenoid mixture in item 407.16, TSUS.

Discussion of Comments

Of the 17 comments received in response to the notice, some believed that the practice to classify such blendstock as motor fuel in item 475.25, TSUS, was correct and others believed that it was worng. Those who believed that the practice was wrong agreed with the Customs view that the various blendstock materials should be classifed according to composition if they did not meet motor fuel standards. Leaded naphtha which failed to meet current commercial gasoline standards would be classifiable as a mixture in item 432.10, TSUS, dutiable at the rate for tetraethyl lead in item 429.70, TSUS, of 9.8 percent ad valorem. If the imported material contained over 5 percent dutiable benzenoids it would be classifiable as a benzenoid mixture in item 407.16, TSUS. Reformate and catalytic naphtha containing over 5 percent dutiable benzenoids (whether or not containing tetraethyl lead) would be classifiable as a benzenoid mixture in item 407.16, TSUS, dutiable at the rate for alkylbenzenes in item 402.36, TSUS, of 0.8 cent per pound plus 17.3 percent ad valorem.

Various arguments were made in opposition to any change in the classification of blendstock materials as motor fuel. One argument was that such products were "unfinished gasoline" not required to be a finished product; that

they were dedicated to use as a motor fuel. An example given was the Mexican product which was sold commercially in Mexico as a motor fuel and could be used, it was claimed, as a motor fuel in this country. However, even though it was acknowledged that it did not meet commercial U.S. standards, it was claimed such a petroleum product was of a "class of kind" that was chiefly used as a motor fuel, as it contained the general physical characteristics of motor fuel.

Several court decisions were listed to support the position that the imported blendstock was of a class or kind of petroleum material to be classified as motor fuel. Considerable reliance was placed on *Cities Service Oil Co.* v. *United States*, C.D. 994 (1946). There the court stated that an oil which did not meet the specifications for oil commonly and commercially used as fuel oil but was used as such after heating, was of a class or kind chiefly used for fuel. The court noted that while the oil product exceeded the highest viscosity rating of standard grades, the evidence was that large consumers of fuel oils use these high viscosity oils. If there is only one practical use for merchandise of this type, it seems obvious, stated the court, that it must be the chief use. In *California Oil Co.* v. *United States*, C.D. 1442 (1952), the court noted that a blending component used in gasoline but not suited for use as motor fuel was not chiefly used as motor fuel. An early customs decision on this issue, T.D. 46069 (1932), ruled that a petroleum naphtha was taxable as a motor fuel only if in its condition as imported it was of a grade which was chiefly used in the U.S. as a motor fuel.

As pointed out in *United States* v. *Exxon Corporation, Chevron Oil Co.*, C.A.D. 1233 (1979), Congress added a definition of the term "motor fuel" to the tariff. Under Headnote 2(b), Part 10, Schedule 4, TSUS, a product, stated the court, must be chiefly used as a motor fuel to be classified as such. Because the product in issue was unsuitable for use as motor fuel, it could not be classifiable as such.

The basic argument against changing the practice is that a petroleum product which is used as a motor fuel after only a minor amount of processing is of the same "class or kind" and therefore should be classified as a motor fuel.

Customs is of the opinion that if item 475.25, TSUS, was an "eo nomine" provision, the claim that the imported gasoline blendstock is an unfinished gasoline would have some merit. However, motor fuel is defined by Headnote 2(b), Part 10, Schedule 4, TSUS, and this limits motor fuel to a petroleum product chiefly used or imported as a motor fuel. This qualification only permits finished gasoline to be classified as motor fuel. As blendstock is not a finished gasoline, it would not be classified in item 475.25, TSUS.

T.D. 66–23(13) listed critical properties for petroleum products used as motor fuel about 20 years ago. During the intervening years the standards have changed and the specifications published then are no longer applicable. The Research and Motor Octane numbers for leaded gasoline, for example, gradually increased from the 1930's to the early 1960's and have generally levelled off since then—*e.g.*, the average Research Octane number in 1942 was about 77, while in the 1980's the average is about 93. The lead requirements for motor fuels have changed over the years and the distillation characteristics have varied within limits.

In *Amorient Petroleum Co.*,v. *United States*, Slip Op. 85–46 (1985), "the statutory definition of motor fuel contained in Schedule 4, Part 10, Headnote 2(b), determines what is or what is not a motor fuel," the court stated, adding that since the chief use of the petroleum product in issue was as a motor fuel, the fact that in one area it could not be so used, but had to be further blended before it could be used as a finished gasoline, did not change the classification. "The fact that plaintiff intended to, and later did, blend some of the imported petroleum derivatives with other materials is irrelevant if the chief use in the United States of the Imported merchandise at the time of importation was a motor fuel." Thus, even though the petroleum derivative may not be a motor fuel in a particular area, if it is chiefly used as such in the rest of the country, it status in a particular locale is not determinative, as it is of a "class or kind" chiefly used as motor fuel.

As to the question of naphtha, it is urged that naphtha regardless of origin, since it is a blendstock, be considered a petroleum product for tariff purposes and classifiable in item 475.35, TSUS, as petroleum naphtha. Headnote 1, Part 10, Schedule 4, TSUS, made allowances for the benzenoid content only in motor fuels, fuel oils and lubricating oils and greases. No exeption is made for naphtha. Therefore, a catalytic naphtha or reformate, with over a *de minimis* amount of dutiable benzenoids present, which is not chiefly used as motor fuel could only be classifiable as a benzenoid mixture and not a petroleum naphtha.

Change of Practice

After careful analysis of the comments and further review of the matter, it is concluded on the basis of the entire record, that the practice of classifying leaded naphtha or any other type of gasoline blendstock as motor fuel is clearly wrong and should be changed. Under Headnote 2(b), Part 10, Schedule 4, TSUS, only those petroleum derivative products which are chiefly used as motor fuel as imported are classifiable as motor fuel in item 475.25, TSUS. Those petroleum products which are not chiefly used as motor fuel as imported but are considered blendstocks are classifiable according to composition. Leaded naphtha is classifiable as a mixture in item 432.10, TSUS, with the rate of duty for tetraethyl lead in item 429.70, TSUS; catalytic naphtha or reformate with over 5 percent dutiable benzenoids present is classifiable as a benzenoid mixture in item 407.16 TSUS, dutiable at the rate of alkylbenzenes in item 402.36, TSUS.

Authority

This change is being made under the authority of section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved:

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–2743 Filed 5–6–86; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Washington, DC, Room 512.

DATE AND TIME: Tuesday, February 11, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report for January
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports-
IV. Report on Review of School Desegregation Project
V. Further Discussion of Project Concepts
VI. Briefing: Indian Tribal Justice
VII. Panel Presentation on Arab-American Civil Rights Concerns
VIII. Civil Rights Developments in the Midwestern Region.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376–8312.

Lawrence B. Glick,

Solicitor, (376–8339).

[FR Doc. 86–2766 Filed 2–5–86; 9:26 am]

BILLING CODE 6335—01—M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 30, 1986, 51 FR 3878.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: February 5, 1986, 2:00 p.m.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Discussion of the Jurisdictional Aspects of Effective Agreement No. 231–010846: Marine Terminal Conference Agreement Between Maryland Port Administration and Baltimore Marine Terminal Association.

John Robert Ewers,

Secretary.

[FR Doc. 86–2890 Filed 2–5–86; 4:20 pm]

BILLING CODE 6730-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

STATUS: Open.

TIME AND DATE: February 13–14, 1986, 10:00 a.m.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Boulevard, Boise, Idaho.

MATTERS TO BE CONSIDERED:

1. Council Deliberation on Mainstem Passage of Juvenile Fish Rulemaking.
2. Council Action on Compilation of Losses Information.
3. Staff Presentation on Hungry Horse Dam Issue Paper.
4. Status Report on Development of Salmon and Steelhead Production Objectives.
5. Council Deliberation on Response to Comments on 1986 Power Plan.
6. Council Deliberation on Comment on Bonneville Power Administration's Resource Strategy.
7. Council Business.
8. Public Comment. The record on the Mainstem Passage of Juvenile Fish closed January 24, 1986; therefore, no public comment can be taken on this subject at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–2772 Filed 2–5–86; 10:43 am]

BILLING CODE 0000-00-M

Federal Register

Friday
February 7, 1986

Part II

Department of Energy

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power; Colorado River Storage Project et al.

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Post-1989 General Power Marketing and Allocation Criteria.

SUMMARY: The Post-1989 General Power Marketing and Allocation Criteria (Criteria) for the disposition of capacity and energy from the Colorado River Storage Project (CRSP), and the Rio Grande and Collbran Projects by the Western Area Power Administration (Western) is published herein, together with a discussion of the relevant issues raised in the comments received on September 4, 1984, Revised Proposed Post-1989 General Power Marketing and Allocation Criteria (1984 Proposed Criteria), 49 FR 34900. A detailed discussion of these issues and resulting changes to the 1984 Proposed Criteria precede the Criteria in this publication. This notice also constitutes a formal request for applications for power and contains a description of the content of such an application. Applications will be considered by Western's Administrator in the determination of proposed allocations to eligible applicants. These proposed allocations will be published in a future **Federal Register** notice. Comments on these proposed allocations will be accepted and any appropriate adjustments will be made. Negotiation of electric service contracts will then follow.

These electric service contracts will be completed by September 30, 1987. Determination of final customer eligibility will be made by September 30, 1988, and reallocation of rescinded or refused allocation amounts will be made in sufficient time so that all contracts may become effective with the October 1989 billing period.

DATES: These criteria shall become effective 30 days following publication of this notice in the **Federal Register.** Applications for an allocation of both energy and associated capacity must be received by Western's Salt Lake City Area Office (SLCAO) from each potential allottee by close of business on April 8, 1986. See section A.1 for further details. While the Criteria provide for project integration, a SLCA Integrated Projects rate may be established through the public participation process in conjunction with the next CRSP rate adjustment. The effective date of the SLCA Integrated Projects rate could be as early as October 1987.

FOR FURTHER INFORMATION CONTACT: For further information on the Post-1989 General Power Marketing and Allocation Criteria and the Call for Applications for Power, contract Mr. Lloyd Greiner, Area Manager, or Ms. Marlene Moody, Assistant Area Manager for Power Marketing at: Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524–5493.

SUPPLEMENTARY INFORMATION: Contents of this section include:

A. Procedures

1. Applications for Power

This notice formally requests applications for power from those interested in receiving the Federal power resources offered. Applicants should advise the Area Manager in writing of their request to receive allocations of energy and capacity at the address set forth above. The request should specify (1) the desire on the part of the applicant to participate in the allocation process, and (2) the kWh/kW desired for both the summer and winter seasons. This last item will be used in determining the amounts of firm capacity to be associated with seasonal energy allocations. Since an adjustment on the energy allocation limit will be allowed for those customers who can demonstrate that energy usage for 1980–82 was reduced as the result of conservation efforts, any such applicants that may be affected by the allocation limit must also submit the required documentation with any application. An application must be received by Western's SLCAO from each potential allottee by close of business on April 8, 1986.

2. Determination of Allocations

Shortly after the deadline for submitting applications for power, Western will publish proposed allocations to all qualified applicants in the **Federal Register**. The notice will seek comments on the proposed allocations.

Once comments are considered and any necessary adjustments made, the Administrator will allocate energy and associated capacity under the terms of the Criteria to all qualified applicants and will publish the final allocations.

3. Contract Negotiations

Having established allocations, Western will begin developing contract language with the allottees. Preliminary draft contracts will be available for review shortly after the publication of the allocations. Those entities receiving an allocation and taking all other required steps will be offered a contract for the allocated resources based on the Criteria. After reasonable opportunity to assist in developing contract language, allottees will have 6 months to accept an offered contract or until September 30, 1987, whichever is later. Contractors must have the means to distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights, unless Western specifically agrees otherwise in writing.

4. Establishment of Integrated Rate

The SLCA Integrated Projects rate could become effective as early as the October 1987 billing period, and will become effective no later than the beginning of the October 1989 billing period.

B. Background on the Development of the Criteria

Western has been developing new marketing and allocation criteria for the CRSP, Collbran, and Rio Grande Projects since the initial public information forum was held on May 22, 1980, in Salt Lake City, Utah. The public participation process has included four public information forums, a public comment forum, and two published proposals. The last public information forum was held September 7, 1983, to discuss the initial published proposal. A 2-day public comment forum ended October 6, 1983. About 1,500 written

comments were received and considered in the development of the Criteria by the Salt Lake City Area Office. The period for submitting written comments on the 1984 Proposed Criteria officially ended on October 26, 1984. In addition, a request for Applicant Profile Data was published in the February 4, 1983, **Federal Register**, 48 FR 5303, and later extensions provided for a filing deadline of December 30, 1983, 48 FR 54880 (December 7, 1983). These applicant profile data have been used as the basis for determining entity eligibility and, in the case of new customers, will be used for the calculation of post-1989 allocations. The Criteria published herein represents a culmination of the public participation process.

C. Summary of Revisions

As a result of comments received on the 1984 Proposed Criteria, several significant additions and revisions have been made. These changes were the result of substantive comments received on the 1984 Proposed Criteria and improvements or clarifications provided by Western. These revisions are summarized as follows:

1. The integration of the Provo River Project with the Collbran, Rio Grande and CRSP Projects has been deferred.

2. The net benefits of integrating each small project (the Rio Grande and Collbran Projects) with CRSP have been divided among: (1) The existing small project customer(s) and (2) all other SLCA Integrated Projects customers in the Northern Division.

3. Marketable firm capacity has increased by 55 MW in both seasons due to a change in reserve levels and exclusion of Provo River capability. Marketable firm energy has decreased slightly due to minor changes in estimates for annual generation from Collbran and Rio Grande, and exclusion of Provo River generation. Because of the increase in marketable firm capacity and the minor decrease in marketable firm energy, the overall load factor has decreased from 52 percent to 50.2 percent.

4. A purchase level of 400 GWh has been selected.

5. Allocation priorities have been clarified.

6. The Northern Division participating customer pool increased to 100 MW, an increase of 25 MW.

7. The Northern Division allocation method now includes consideration of existing peaking power commitments in determining allocations to existing customers. Southern Division existing customer comments resulted in the selection of an allocation method based on CRSP long-term power and all other Federal power resources (Alternative No. 3 in the 1984 Proposed Criteria).

8. A first right of refusal to the cities of Enterprise and Hurricane, Utah, up to the remaining 50 percent of their 1975 summer season and 1976–77 winter season load requirements, has been granted in the event power is available for reallocation.

9. A Conservation and Renewable Energy (C&RE) Incentive Program Pool of approximately 30 MW in each season has been created as a direct result of decreasing reserve levels. The incentive program pools will have load factors similar to pools for Northern Division existing and participating customers.

10. The original proposal to allow for a one-time exchange of capacity within divisions has been liberalized to allow for annual exchanges among all customers, whenever Western will not be adversely affected.

11. Limits have been established on the energy and capacity amounts for which purchase costs will be passed directly to the customers. The annual pass-through costs are limited to expenses associated with purchasing 400 GWh of energy, 109 MW of winter capacity, and 95 MW of summer capacity. The cost of all other purchases will be included in studies used to develop firm rates.

12. Federal points of delivery (FPODs) in Wyoming and Montana, previously proposed to be deleted as delivery points on the SLCA Integrated Projects transmission system, will be retained. Also, additional FPODs have been added at Fontenelle and Elephant Butte.

13. The contract term has been changed from the proposed 10-year term to a 15-year term, but with provision for Western to adjust contracted amounts of capacity and energy at the end of 10 years based upon the marketable resource. Each contractor will be given a 3-year advance notice of the adjustment.

14. The Resale of Electric Energy article has been changed to require semiannual notice of costs of power to consumers. The proposal that compliance with existing provisions of the Resale article be an eligibility requirement has been eliminated.

15. A limit on energy allocations has been included such that no applicant will receive a seasonal allocation of energy that will exceed its average seasonal total energy use for the period 1980–1982. An adjustment will be allowed for those customers who have demonstrated to Western's satisfaction that energy usage for this period was reduced as the result of conservation efforts.

D. Major Issues

1. *Eligibility Requirements—Application of the Preference Laws.* In the 1984 Proposed Criteria, Western proposed that resources would be allocated in accordance with preference provisions of power marketing law in the following order of priority: (1) Preference entities within the SLCA Integrated Projects market area; (2) preference entities outside the market area; and (3) nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

The Utah Power & Light Company (UP&L) application on behalf of 143 municipalities was determined to be a request for an allocation of power to a nonpreference entity. Under power marketing law, therefore, UP&L's request could not be given equal consideration with requests from preference utilities. Western did conclude, however, that a sale to an investor-owned utility (IOU) acting as an agent for certain public entities was superior to sales to IOUs acting on their own behalf and therefore was given priority within nonpreference category.

a. Comments

A number of comments were received regarding the issue of preference to be given in the sale of Federal power. Most commended Western for its discussion of the subject. Four supplied additional comments stating that:

—The revised preference criteria violate certain provisions of the Department of Energy Organization Act (DOE Act) found at section 102(4), (14), and (16) (42 U.S.C. 7112);

—Municipalities without distribution systems are or are not (the comments are divided on this issue) entitled to preference under section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and Western is required to allocate power to all entities entitled to preference under said law.

—Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, requires Western to allocate power to an IOU and/or 143 additional municipalities on behalf of whom it also applied for an allocation of CRSP power;

—Western's discussion stated that existing customers have no vested right to another allocation but the allocation criteria effectively give them one;

—The preference criteria were prejudged and predetermined by then-

Secretary of Energy Hodel before the IOU had an opportunity to comment;

—The concept that preference laws promote "yardstick competition" is an anachronism; and

—The allocation criteria violate the constitutional rights of the IOU and its municipal customers to due process and equal protection, and also violate the 10th amendment.

On the subject of priorities among qualified preference entities, one commenter suggested a category that would give nonpreference entities inside the market area precedence over preference entities outside the market area, with the intention to maximize benefits to Upper Basin States. An additional comment requested clarification of a statement provided by Western in the 1984 Proposed Criteria regarding the application of priorities to the pricing of nonfirm energy.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Preference Issues; and
(2) Priorities Among Qualified Preference Entities.

(1) *Preference Issues.* Most of these comments repeat comments made previously and addressed at some length by Western in the 1984 Proposed Criteria. This response incorporates that previous response by reference and updates the previous response with additional information as needed. The IOU's constitutional arguments did not expand upon the comments discussed in the 1989 Proposed Criteria and will not be repeated here.

(a) The DOE Act (42 U.S.C. 7112). In section 102, Congress "declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs." It then lists 18 purposes of Congress in enacting the Department of Energy Organization Act, including such diverse functions as:

"to establish a Department of Energy" section 102(1); "to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department" section 102(7); and "to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act" section 102(18).

The commenter asserts that three of the 18 general purposes listed in section 102—"to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program" section 102(4); "to assure . . . that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes" of this DOE Act section 102(14); and "to create an awareness of and responsibility for the fuel and energy needs of rural and urban residents" section 102(16) are more than just parts of a statement of congressional purposes. The commenter claims they constitute mandates which Western must follow. The argument is made that these portions of section 102 of the DOE Act mandates additional preference criteria to be followed in determining who may receive an allocation of CRSP power.

This comment is inconsistent with the plain language of section 102, as well as other sections of the DOE Act and its legislative history.

As the District Court of the District of Columbia stated in *Ad Hoc Committee for Integrity* v. *Hodel*, 594 F. Supp. 569 (D.D.C. 1984), the legislative history of the DOE Act indicates that Congress intended the purposes listed in section 102 to be significant concerns of the Department of Energy assigned to a high level official for oversight. But Congress did not "mandate any particular organizational method for doing so. To the contrary; the legislative history indicates a congressional desire to give the Department flexibility in carrying out its required functions. . . . Under the law, the Department has flexibility, and it accordingly is not for this Court to overrule the Secretary's decision as to how the functions assigned to him should be carried out." *Id.* at 573–574. Thus, section 102 consists not of mandates to Western, or of amendments to the Federal preference law, but of suggestions to the Secretary of Energy of general areas of functions, purposes, and responsibility to be assigned among the Secretary's staff. Nothing in the language of section 102 or in the legislative history of the DOE Act suggests that any amendment to the Federal preference laws was intended to result from the listing of purposes.

In any event, these marketing criteria are consistent with the congressional purposes of sections 102(4), (14), and (16). The criteria contain incentives for prospective customers to develop renewable resources and conservation programs and penalties for failure to implement C&RE programs in accordance with established Guidelines and Acceptance Criteria. The "productive capacity of private enterprise" is and will continue to be employed to transmit SLCA Integrated Projects energy and also, when economical, for purchases of firming capacity and energy. The energy needs of many rural and urban residents will be recognized and cared for through the allocations of power to preference entities such as municipalities and rural electric cooperatives.

(b) *The Reclamation Project Act of 1939.* An IOU commenter asserted that, under the preference provisions of 43 U.S.C. 485h(c), the 143 municipalities on behalf of which the IOU applied for power were entitled to preference and to equal treatment with other preference entities applying for power although none of the municipalities owned its own distribution system or had previously assumed any utility responsibilities. The IOU also asserted that 16 U.S.C. 825s, which directs the sale of Federal power "in such manner as to encourage the most widespread use thereof," requires Western to allocate power to those municipalities. Another entity representing public utilities stated that the Second Circuit Court of Appeals, in *Power Authority of the State of New York* v. *FERC*, 743 F.2d 93 (2d Cir. 1984), found that the Federal preference extends only to entities which have assumed full utility responsibility.

One question raised by a municipality may have relevance to potential new customers seeking to acquire utility responsibility for the post-1989 period. The question was whether the lease of distribution facilities, in lieu of ownership, would be adequate to qualify for an allocation. The proposal suggested that the city was interested in executing a long-term lease with the local IOU for the use of its facilities. The city would contract with Western for a direct allocation of energy and negotiate supplementary agreements with other suppliers. The city would perform the routine operational functions, such as meter reading, as well as accounting and billing functions. Western determined that public ownership of a distribution system is a prerequisite to satisfy eligibility requirements for allocations of Federal power under these criteria.

Our review of the Second Circuit Court of Appeals case did not disclose any language clearly addressing the issue of whether only entities assuming full utility responsibility are entitled to preference. The legislative history of the preference provisions of 43 U.S.C. 485h(c) does reveal that the language was written by the Bureau of Reclamation to clarify the legality of its practice at the time of giving preference

to, among others, municipally-owned distribution systems. (See the remarks of Mr. Page, the Commissioner of Reclamation, and Mr. Cheadle, Chief Counsel to the Commissioner, in Hearings Before the House Committee on Irrigation and Reclamation on H.R. 6773 and H.R. 6984, 76th Cong., 1st Sess. at 120, 131, 132, 144 (June 15–29, 1939).

Assuming arguendo, however, that municipalities without distribution systems and which have not assumed full utility responsibility are preference entities within the language of 43 U.S.C. 485h(c), they are still not entitled to receive an allocation of Federal power. "The preference clause requires only that public entities be given a preference over private entities in the marketing of power generated by Federal reclamation projects. . . . It does not require that all preference customers be treated equally or that all potential preference customers receive an allotment. . . . Nothing in the legislative history of the Reclamation Project Act of 1939 suggests that Congress intended to limit the Secretary's discretion to interpret the preference clause in making decisions as to whether or how or on what terms he will sell power to particular customers as compared to other preference customers." *City of Santa Clara* v. *Andrus,* 572 F.2d 660, 667, (9th Cir.), *cert. denied,* 439 U.S. 859 (1978).

Where ". . . one preference entity challenges the Secretary's decision to discriminate against it in favor of other preference entities, the reclamation laws provide no law to apply to the dispute. If he so chooses, the Secretary can market *all* available power to a single public entity without running afoul of the preference clause." [emphasis in original] *Id.* In 1985, this reasoning was affirmed by five courts in the 4th, 8th, and 11th Circuits. (See *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities III),* No. C–C–85–384–P (W.D.N.C. October 30, 1985); *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities II),* No. 84–2152 (4th Cir. Mar. 19, 1985); *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities I),* No. 82–888–CIV–5, (E.D.N.C October 16, 1984); *Greenwood Utilities Commission* v. *Hodel,* 764 F. 2d 1459 (11th Cir. 1985); *South Sioux City* v. *Western Area Power Administration,* No. CV82–L–107 (D. Neb. May 20, 1985).

In this instance, the commenter does not represent a municipality; the commenter represents an IOU applying on behalf of 143 municipalities. 43 U.S.C. 485h(c) states that "preference shall be given to municipalities and other public corporations and agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936." IOUs are clearly not entitled to preference under this law. Preference cannot, therefore, be given to the IOU whether or not it is acting on behalf of the municipalities it serves.

(c) *The Flood Control Act of 1944.* Two commenters asserted that the language of section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, which requires that Federal power be marketed "so as to encourage the most widespread use thereof," requires the allocation of power to all eligible entities. The phrase applies to the transmission and sale of "[e]lectric power and energy generated at reservoir projects under the control of the Department of the Army." The SLCA Integrated Projects power and energy are not generated at Army reservoir projects, so this phrase does not apply directly to the marketing of this power and energy as a matter of law. Western does, as a matter of policy, give effect to the phrase in developing power marketing programs. The phrase, however, is susceptible to so many different interpretations that it "permits the exercise of the widest administrative discretion by the Secretary. It does not supply 'law to apply.' " *Santa Clara,* 572 F.2d at 668. In 1985, this analysis was affirmed by Federal courts in the 4th and 11th circuits in *Electricities I,* at pages 7–8, and *Greenwood,* 764 F.2d at 1465.

(d) *Vested Rights.* The IOU states that Western says existing preference customers have no vested right to Federal power and then effectively recognizes such a vested right. Western does give more weight in allocating power to those currently receiving Federal power in order to avoid inflicting undue economic hardship upon existing customers. The Criteria also recognize the equity of selling Federal power to entities that were unable to contract for power earlier. The Criteria attempt to strike a balance between needs of existing and potential customers.

(e) *Former Secretary of Energy Hodel's Remarks.* The IOU alleged that the proposed preference criteria were prejudged and predetermined by then-Secretary of Energy Hodel before the IOU had an opportunity to comment. This allegation is based on remarks made by Secretary Hodel at a May 3, 1983, meeting of the American Public Power Association, in which he expresses general support for the preference clause. Western does not see anything arbitrary, capricious, improper, or illegal in a Secretary's statement that he supports the laws he is required to administer.

(f) *"Yardstick Competition."* The IOU argues that the concept that preference laws promote "yardstick competition" is an anachronism. This same commenter previously argued that certain congressional purposes in enacting the DOE Act in 1977, found at 42 U.S.C. 7112, were very important. One of the purposes, mentioned at section 102(12), was "to foster and assure competition among parties engaged in the supply of energy and fuels." We have recent legislation, therefore, which indicates that Congress does not consider the concept of competition to be anachronistic. In any event, Western is not in any position to second-guess Congress on the competition issue. Western is legally bound to uphold the preference law regardless of whether it may or may not be founded on an anachronistic idea. See *Power Authority of State of New York* v. *FERC,* 743 F.2d at 105.

(2) Priorities Among Qualified Preference Entities. The suggestion to modify priorities to provide a higher priority to nonpreference entities within the market area over preference entities outside the market area would allow for a greater allocation to entities in the Northern Division States. Adoption of such a proposal would mean, the commenter also believes, that the Southern Division allocations should be withdrawn. The legislative history of the Colorado River Storage Project shows that Congress indeed considered including a geographic preference clause in the CRSP Act but chose not to enact such a clause. The issue of whether the Southern Division should receive any SLCA Integrated Project power was thoroughly discussed in the 1984 Proposed Criteria at 49 FR 34912–34914, and need not be repeated here.

In the 1984 Proposed Criteria, Western provided a statement following the listing of allocation priorities as follow: "These priorities may be recognized within pricing blocks for non-firm energy." This statement means that Western will normally apply this same order of priority when considering competing purchasers of nonfirm energy. Preference is currently applied within each 1-mill price range.

c. Summary and Conclusion

Western's application of the preference clause is based on the clear language of the law as well as congressional intent and long-standing

administrative policies. The preference clause still has validity as an important principle, and, indeed, as a legal requirement in the marketing of Federal power. The attainment of preference status by entities taking the necessary steps to do so will be recognized by Western. Western concludes, after carefully reviewing the pertinent legislation, that this is the appropriate application of the preference laws. To clarify the order of priorities as previously presented in the 1984 Proposed Criteria, the allocation priorities are as follows:

(1) Preference entities within the SLCA Integrated Projects' market area;

(2) Preference entities outside the SLCA Integrated Projects' market area;

(3) Nonpreference entities acting as agents for public entities without distribution systems; and

(4) Nonpreference entities acting on their own behalf. Western's position presented in the September 1984 **Federal Register** notice regarding the priority that should be given among qualified preference entities remains unchanged.

Western continues to believe there is justification for treating existing customers differently than potential new customers. In this sense, existing customers have been given a priority, but this priority is of a different character than that given to preference utilities over investor-owned utilities. Existing preference customers have no vested right in Federal power. However, in balancing the interests of existing and potential new customers that are qualified under the law to preference consideration over investor-owned utilities, Western continues to give more weight to those currently receiving benefits to avoid inflicting undue economic hardship, while recognizing the need to provide other qualified preference purchasers some reasonable benefits from Federal power.

2. Other Eligibility Requirements

Western acknowledged the need to clarify the eligibility requirements and revised them in the 1984 Proposed Criteria. Western refused to extend the December 30, 1983, deadline for filing applicant profile data, which is one of the eligibility requirements. Western did, however, grant an extension of the January 1, 1984, deadline to have taken "significant and tangible steps" to acquire the means to distribute power by September 30, 1988, to the cities of West Bountiful, Richfield, and Mapleton, Utah.

Western requested further comments from the public on whether conservation should be an allocation criterion, and indicated that an environmental assessment would consider the matter in further detail.

Western eliminated the initially proposed special eligibility requirements for wholesale utilities in the 1984 Proposed Criteria. However, Western indicated that both wholesale and retail utilities would be required to inform consumers of the source and cost of various components of power supply. That proposed requirement is discussed under the Contract Issues (section F.4).

The 1984 Proposed Criteria required existing customers to demonstrate compliance with the spirit of the Resale article in its current contract to avoid a reduction or elimination of its potential allocation.

a. Comments

—Deadline for taking "significant and tangible steps" to acquire the means to distribute power should be extended.

—Conservation and renewable energy programs should or should not be an allocation criterion.

b. Discussion

The above issues and comments have been grouped for discussion into the following numbered categories:

(1) Applicant Profile Data;

(2) Deadline for Attaining Utility Status;

(3) Resale Compliance by Existing Customers; and

(4) Other Special Eligibility Requirements.

(1) *Applicant Profile Data.* Certain load, resource, and organizational data, referred to as applicant profile data, were requested in a February 4, 1983, **Federal Register** notice, 48 FR 5303. No extensions to the final deadline of December 30, 1983, have been granted for filing the requested data. However, Western will consider that an applicant has complied with the requirements to file applicant profile data if their loads were incorporated as a part of another potential applicant's filed data. Western reserves the right to request clarifying or supplementary data from any applicant who has fulfilled the applicant profile data requirement, without generally extending the deadline for filing such data.

(2) *Deadline for Attaining Utility Status.* Santaquin and Elk Ridge, Utah, each requested treatment similar to that given to West Bountiful, Richfield, and Mapleton, Utah, in the 1984 Proposed Criteria. They desire to have an extended period of time in which to take "Significant and tangible steps" toward acquiring the means to distribute power, thereby acquiring utility status. Each indicated that some initial steps had been taken. While Centerville, Utah, indicated an interest in pursuing utility responsibility, no specific request for an extension of the deadline was received, nor did Western receive any indication that initial steps had been taken to acquire such responsibility. As previously stated in the 1984 Proposed Criteria, examples of "significant and tangible steps" include:

(a) Evidence of negotiations with an investor-owned utility regarding distribution system acquisition;

(b) Action before a Public Service or Public Utility Commission to acquire a system;

(c) Initiation of condemnation proceedings; or

(d) Evidence of a financial commitment to purchase a transmission system.

In the September 4, 1984, **Federal Register** notice, West Bountiful, Mapleton, and Richfield, Utah, were given a 1-year extension to show that "significant and tangible steps" had been taken to acquire the means to distribute power by September 30, 1988. This 1-year extension was granted since timely applicant profile data had been submitted by or for them, each had taken initial steps to acquire utility status, and each had specifically requested an extension of the January 1, 1984, deadline for taking "significant and tangible steps" to acquire utility responsibility. On July 26, 1985, Western sent a notice to West Bountiful, Richfield, and Mapleton requesting documentation of significant and tangible steps taken toward utility status. Mapleton did not respond by September 4, 1985, and is therefore no longer a potentially qualified applicant. Richfield provided a response to Western on September 4, 1985, documenting recent actions taken to acquire utility responsibility, and West Bountiful has been providing Western with information on its progress in acquiring a distribution system on a regular basis. Both Richfield and West Bountiful are therefore potentially qualified applicants for power hereunder.

Since acquiring the means to distribute can be a lengthy and difficult process and must be completed by September 1988 to meet the eligibility requirements, Western is unwilling to generally extend the deadline for taking "significant and tangible steps." However, those municipalities who have already taken initial steps and have requested an extension of Western's deadline, such as Santaquin and Elk Ridge, Utah, will be granted a 3-month extension from the date of the

publication of this notice to show that "significant and tangible steps" have been taken to acquire the means to distribute power by September 30, 1988. Such municipalities will therefore be included in the proposed allocation process if they submit applications for power.

In December 1983, the city of Panguitch, Utah, submitted a letter to Western requesting information on the necessary steps to qualify as an eligible customer in the post-1989 period. Without realizing that load data had been submitted on their behalf, Western replied that the city was ineligible to participate. Since the city's failure to meet the deadline for taking "significant and tangible steps" may have been due to Western's response upon discovering that data for Panguitch had been provided, Western notified the city that it would have 3 months (until December 4, 1985) to submit information documenting "significant and tangible steps" taken prior to that date to acquire utility responsibility. A letter and a formal resolution were submitted by the city prior to the December 4, 1985, deadline documenting the significant step taken to acquire utility responsibility. Panguitch is therefore a potentially qualified applicant for power hereunder.

(3) *Resale Compliance by Existing Customers.* The 1984 Proposed Criteria included an obligation of existing customers to demonstrate compliance with the spirit of the Resale of Electric Energy article in their current contracts in order to receive an allocation. Western indicated that existing customers could show that the benefits of low-cost power have been passed on to the consumer, as required by the article, by at least two possible ways: (1) Through the lowest possible rates, or (2) through rates established in an open and public manner to provide revenues to accomplish legitimate public purposes.

No Comments were received on this requirement, indicating that existing customers are confident they can demonstrate compliance with the spirit of the article. The SLCAO annually asks its contractors to submit the data requested in that article, and data is now regularly submitted. To eliminate the administrative burden associated with a comprehensive review of compliance documentation in conjunction with the allocation process, Western has decided to eliminate resale article compliance as an eligibility requirement. Assuring that the benefits of low-cost power are passed on to consumers will continue to be an objective which can be achieved under contract provisions, and need not complicate the allocation process.

(4) *Other Special Eligibility Requirements.* The Environmental Defense Fund (EDF) and the National Wildlife Federation (NWF) proposed that conservation be an eligibility criterion rather than a goal to be encouraged after contract commitments are made. Western initially proposed to accomplish its conservation objectives through contract provisions and indicated that Congress had endorsed that approach in the passage of Title II of the Hoover Power Plant Act of 1984, 42 U.S.C. 7275. However, Western requested further comments and indicated that a decision would be made later. In addition, the Post-1989 Environmental Assessment (the Post-1989 EA) considered conservation as an eligibility criterion.

A number of commenters expressed opinions that past conservation practices should not be an overriding factor in determining allocation of Federal power. Some believe that conservation used as an eligibility criterion would stifle rather than promote conservation. The EDF and NWF continue to support the use of conservation as an allocation criterion.

As required by the Hoover Power Plant Act of 1984, Western promulgated an amendment to its Guidelines and Acceptance Criteria (G&AC) for the customer conservation and renewable energy program. During the public review process for the amended G&AC, similar comments proposing a precontractual conservation requirement were received. In the August 21, 1985 **Federal Register** notice containing Western's announcement of the final amended G&AC, Western pointed out that the Hoover Power Plant Act stipulates that the required contract article shall contain time schedules for meeting program goals, but did not find a basis for making the conservation and renewable energy program a precondition of the power sales contract.

Western further believes that the best conservation program is one that provides for an ongoing evaluation of the cost effectiveness of various technologies and methods in a variety of utility and consumer environments. The 1985 G&AC provide for these eventualities, while a denial of Federal power will not encourage prospective C&RE activities. It is further noted that the existing contract article requires the customer to submit an acceptable conservation program to Western within 12 months after the date of execution of the contract. Western fully intends to complete the contract negotiations for these allocations at least 1 full year before delivery of the actual power being allocated, thus for those receiving allocations little real benefit in terms of the timing of required customer conservation programs would actually be realized from a precontract conservation requirement.

Western concludes that the existing conservation requirements are appropriate, consistent with the requirements of the Hoover Power Plant Act of 1984 and will continue to be successful in meeting the objectives of an effective conservation and renewable energy program. However, approximately 65 GWh of firm energy with roughly 30 MW of firm capacity in both seasons have been set aside for use in a C&RE Incentive Program. Western believes this program pool provides an excellent opportunity to further pursue the objectives of the existing Westernwide C&RE Program, that is (1) to increase energy production from renewable resources, (2) to reduce dependence on foreign energy, and (3) to improve efficiency in energy utilization. These objectives can be accomplished by allocating a portion of the total marketable resources as an incentive for developing renewable resources and effective energy management programs.

The development of the details of the C&RE Incentive Program, such as evaluation criteria and allocation methodology, is not envisioned to start until about September 1988, at which time public participation will be sought to formulate the program. It is contemplated that this energy and capacity may be marketed on another basis until used in this incentive program.

c. Summary and Conclusion

No extension of the final deadline of December 30, 1983, will be granted for filing applicant profile data, though Western reserves the right to request clarifying or additional information from applicants who have already submitted data.

The 1-year extension to show "significant and tangible steps" granted to West Bountiful, Richfield and Mapleton, Utah, has expired. As Mapleton failed to submit the required information, the city will no longer qualify as a potential applicant. The 3-month extension Western granted the city of Panguitch, Utah, for taking significant and tangible steps has also expired. West Bountiful, Richfield, and Panguitch, Utah, are potentially qualified applicants. The cities of

Santaquin and Elk Ridge, Utah, will be granted a 3-month extension from the date of publication of this notice to demonstrate "significant and tangible steps" have been taken to acquire the means to distribute power by September 30, 1988.

Western has eliminated compliance with the spirit of the Resale of Electric Energy article by existing customers as an eligibility requirement. Compliance will be encouraged through appropriate contract provisions.

Due principally to influences on Western's policies from objectives other than conservation alone, and due also to the uncertainties of developing satisfactory evaluation criteria, Western concludes that conservation will not be a general allocation criterion. A pool of firm energy with capacity, approximately 65 GWh with 30 MW in each season, will be reserved for use in a C&RE Incentive Program. This energy and capacity will most likely be marketed on another basis, that is, not as a long-term firm resource, until used in this incentive program. Details of the development of program evaluation criteria and allocation methodologies will be determined through a future public progress. This process is presently envisioned to begin about September 1988.

3. Market Area

The 1984 Proposed Criteria continued allocations to the Southern Division in amounts that represent a compromise adjustment to account for the change that has occurred in the load diversity between the summer and winter seasons in the Northern Division since the initial allocations in 1962. The Southern Division customers would experience a 26 MW increase in the winter season and a 55 MW reduction in the summer season.

Also proposed were minor changes to the description of the Northern and Southern Division market areas, and the market area for new customers was limited to the Salt Lake City Area of the Northern Division.

a. Comments

—Power and energy generated in the Northern Division should be allocated to Northern Division customers.
—Support allocations to the Southern Division.
—Oppose summer season reductions in Southern Division.
—Western does not have an "option" to withdraw Southern Division allocations.
—Support withdrawal from the Southern Division in 1989. Southern Division allocations should be completely withdrawn by the year 2000, at the latest.
—Request clarification of new customer market area.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Southern Division Withdrawal; and

(2) New Customer Market Area.

(1) *Southern Division Withdrawal.* The principal arguments raised were (1) that it is inappropriate to market hydroelectric resources physically located in the Northern Division outside of that division, and (2) that the Southern Division allocations were intended to be permanent. These issues were discussed in detail in the September 1984 publication, 49 FR 34912–914, and will not be repeated here. Western's tentative conclusion in 1984 was that the spirit of the allocation made in 1962 should be maintained, but that adjustments should be made to reflect changing circumstances.

No new arguments were advanced that persuade Western that the proposed compromise is inappropriate. One commenter requesting Western to reconsider allocating to the Southern Division stated that ". . . to do otherwise would represent an abuse of the discretion vested in Western." Another commenter quoted excerpts from 1955 House and Senate reports to support the position that Western does not have the authority or "option" to withdraw allocations from the Southern Division. Some of those urging withdrawal from the Southern Division advocate giving notice to Southern Division contractors now that withdrawal will occur at the end of 10 years.

Without question, the principal marketing area for CRSP resources is the Northern Division. Western sees no compelling reasons why the relatively small amounts of CRSP power marketed in the Southern Division should be withdrawn in the foreseeable future. Approximately 30 percent of the preference loads in the Southern Division are supplied with Federal power compared to about 50 percent in the Northern Division. Western's interest in avoiding economic disruptions extends equally to existing contractors in both divisions. Finally, a common interest in CRSP serves as a catalyst in promoting cooperative activities among preference utilities in both divisions that generally benefit consumers.

Western does have the option to restrict marketing to the Northern Division if circumstances in the future indicate that is the best course of action. The 1955 congressional reports cited can only be regarded as historical information that do not compel Western to take actions contrary to those suggested by existing circumstances. Western has made every effort to exercise its discretion in a thoughtful and evenhanded manner. In that spirit, the compromise previously proposed has been selected as the most reasonable solution to this divisive issue.

(2) *New Customer Market Area.* Two commenters, one in Texas and another in South Dakota, shared a common concern that they were apparently disregarded as new customers in the hypothetical allocations that accompanied the 1984 Proposed Criteria. Western's treatment was not in error because the description of the proposed market area for new customers does not include Texas or South Dakota. Western accordingly concluded that these entities are not eligible for consideration as prospective customers. Although a member of the South Dakota entity serves the northeastern portion of Wyoming, this service area is outside that portion of southwestern Wyoming within the Colorado River Basin that comprises a portion of the proposed new customer market area.

Western has reexamined the description of the new customer market area presented in the September 1984 **Federal Register** notice and has provided improvements to the description so that the market area is clearly limited to the Salt Lake City Area of the Northern Division. In addition, the portion of Arizona included in the Salt Lake City Area has been redescribed to include the service area of those Northern Division cooperatives serving retail customers in Arizona.

c. Summary and Conclusion

As no new arguments were presented that would persuade Western to reconsider the proposed adjustment of Southern Division allocations, the proposal will be adopted in these criteria.

No compelling comments were received which required reconsideration of the proposed new customer area. Accordingly, Western will adopt the proposed market area.

4. SLCA Project Integration

The 1984 Proposed Criteria proposed the consolidation of the CRSP, Collbran, Rio Grande, and Provo River Projects to increase the marketable resources,

assure repayment of costs, simplify contract development and administration, and create a common rate. Repayment requirements would continue to be determined separately for each project. Preliminary results of power repayment studies indicated that a composite rate would increase the CRSP rate by roughtly 0.10 mill, reduce the rates paid by the existing Collbran customer by about 10 mills, and reduce the rate paid by existing Rio Grande Project customers by about 20 mills. Western provided a detailed discussion of the impacts due to integration, the legal authority, and the disposition of the additional resources that would result directly from integration and concluded that the benefits outweighed the costs of integrating the resources, as proposed. Suggestions were invited for equitably distributing the resources from the smaller projects, and Western indicated that financial impacts on individual customers would be further evaluated.

a. Comments

—Oppose integration because (1) CRSP should not be operated to subsidize other projects, (2) section 5(c) of the CRSP Act, which mandates all revenues associated with CRSP shall be credited to the Basin Fund, should not be circumvented, and (3) CRSP may not receivce reciprocal financial benefits once smaller projects have been repaid.
—Blended rates would reduce electricity costs for the smaller projects, thus encouraging wasteful consumption.
—Additional resources resulting from integration should be allocated to new customers in the Northern Division to promote more widespread use.
—Western's request for suggestions on the distribution of smaller project resources to existing customers is unclear.
—Allocations to Collbran and Rio Grande Project customers should remain at present levels through the next contract term.
—Implement the requisite rate integration as soon as possible.
—Support integration but note additional facilities may be necessary for reserve and transmission requirements and to achieve effective integration.

b. Discussion

The majority of comments were generally supportive of the proposed concept of project integration. The few commenters who opposed it mainly contended that CRSP revenues would be used inappropriately or illegally to subsidize revenue requirements of the smaller projects, and that the blended rates would increase consumption.

Western believes project integration benefits Western's customers as well as the Federal Government. As a result of project integration, additional firm capacity will be made available and will be marketed to all CRSP Northern Division customers. The Collbran and Rio Grande Projects' customers will now be assured lower and more stable rates as well as firm annual commitments. In the past, the Collbran and Rio Grande Projects have had problems in meeting repayment obligations and maintaining marketable rates. The United States will now be assured that the Collbran and Rio Grande Projects will be repaid within the prescribed time period. Finally, a single instead of multiple rate adjustment process as well as the simplification of contract administration due to project integration will reduce administrative costs.

The additional firm capacity obtained because of integration exists for several reasons. The geographic isolation of the projects' river basins creates a certain diversity among the projects which will be utilized in integrated operations but which could not have been recognized in long-term firm commitments with separate projects. Integration allows the sharing of operational reliability requirements. If the individual projects must provide their own reserves, the amount of firm power available is reduced, and in some cases, firm power cannot be offered at all. This reduces the desirability and value of the resource as well as revenues available for repayment.

The CRSP Southern Division customers do not share in the resources of the smaller projects. These smaller projects have never been marketed in the Southern Division and are not located in the Southern Division marketing area. Southern Division entities will bear a small increase in the cost of power as a result of integration, along with all Northern Division customers. However, they will continue to share the CRSP resource at a very reasonable cost.

Integration will assure that repayment of these smaller projects will be made on schedule regardless of existing market conditions. Western believes that the slight increase in rates for CRSP customers is more than offset by the benefit just described as well as the additional firm capacity that the CRSP Northern Division customers will receive.

The advantage of a single rate process is significant to Western. The current requirement to complete rate adjustment procedures for each project has burdened Western's staff, resulting in the delay of vital marketing and contracting activities. The single rate process would permit Western's staff to provide better customer service. Customers currently purchasing power from more than one project will also be spared the burden of participating in more than one rate adjustment process. It should be noted that although there will be a single rate adjustment process, each project will continue to retain its separate financial identity and separate power repayment study (PRS).

In addition to the points made above regarding additional capacity, repayment and a single rate adjustment process, integration reduces the impact of a variety of other conditions the smaller projects would experience standing alone. The smaller projects lack upstream regulation for their reservoirs so that power production is related in a more immediate way to current weather conditions. Beyond that, the water releases from these projects are controlled by non-power needs so that the project standing alone is not capable of shaping its power production pattern to the needs of a customer to the extent necessary to optimize the marketability of the power produced.

One commenter objected to the proposed integration of the CRSP with the Rio Grande, Provo River, and Collbran Projects. The commenter asserts that under section 5(c) of the CRSP Act, 43 U.S.C. 620d(c), all revenues collected in connection with operation of the CRSP must be placed in the Basin Fund and cannot, therefore, be used to repay the costs of the smaller projects. This same commenter approves of the feature of the criteria which calls for Western to purchase additional power and energy for its customers provided that the costs are passed through to the customers and the customers support the purchases.

The integration of the CRSP with the Rio Grande and Colbran contracts simply consists of a purchase by the CRSP of the Rio Grande and Collbran resources. Western's power customers have not objected to this or any other purchase of power and energy by the CRSP. Furthermore, the integration of other Federal powerplants with those authorized under the CRSP Act is mandated by section 7 of the CRSP Act, 43 U.S.C. 620f, "so as to provide the greatest practicable amount of power and energy that can be sold at firm power and energy rates."

While it is true that the CRSP Act places certain limitations on how revenues in the Basin Fund must be applied, the limitations apply only to

revenues in the Basin Fund in excess of operating needs. Purchased power costs of the CRSP are costs associated with operation of the CRSP, in accordance with standard utility accounting practices. See, for example, 18 CFR Part 101, The Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. Although Western is not a utility subject to the Federal Power Act, it is noteworthy that Western is acting in accordance with standard utility practices by considering purchased power expenses associated with the Rio Grande and Collbran Projects to be operating expenses of the CRSP. Since these costs are operating expenses, they are under section 5(c) available, without further appropriation, for the purchase of Rio Grande and Collbran resources. They do not constitute revenues in the Basin Fund in excess of operating needs, the proper disposition of which is specified in section 5(d) of the CRSP Act.

Western does not agree that a blended rate among projects will encourage consumption. A detailed analysis was performed in the Post-1989 EA regarding changes in consumption that resulted from project integration. The conclusion drawn was that the increases in consumption due to project intergration would be insignificant, since consumer habits with regard to energy consumption are only slightly altered in the short-term and especially since Western's treatment of the smaller customers' allocations would further minimize the individual impacts upon consumption. The principal purchasers of Collbran and Rio Grande Project power draw on a variety of other larger resources to meet their power needs. The impact of any rate change will be much reduced by the time the end-user receives the blended product. Moreover, the marginal prices paid by Western's customers for new power to meet load growth certainly promotes conservation rather than consumption. Finally, the recently announced Final Amended Guidelines and Acceptance Criteria for customers C&RE programs (50 FR 33892) that will be implemented through the conservation articles contained in Western's power sales contracts will serve to further discourage unwise consumption.

The Pose-1989 EA determined that the only potential environmental impact due to SLCA's Project Integration was in terms of changes in consumption. However, as noted above, after a detailed analysis, this potential impact was concluded to be insignificant.

Project integration is not a new concept for Western. Western has consolidated or integrated a number of its projects in the past for economy and efficiency reasons. These include the following consolidated or integrated projects that were accomplished either through an administrative or legislative process: Pick-Sloan Missouri Basin Program, Parker and Davis Dams, Central Valley Project, and Falcon and Amistad Projects. In addition, Western's Loveland Area Office is currently integrating the Pick-Sloan Missouri Basin Program-Western Division with the Fryingpan-Arkansas Project in its Post-1989 Criteria.

Western sees no legal obstacles to administratively integrating SLCA's projects. Under power marketing law, the Secretary has the authority to perform "any and all acts" for the purpose of putting his statutory responsibilities into full force and effect. See 42 U.S.C. 7152 and 7251. This includes the ability to integrate projects and to charge a uniform rate for the resulting power. Western also believes that operational integration, reflected in the combining of operational reliability requirements, comports with the congressional mandate to operate CRSP powerplants in conjunction with other Federal powerplants so as to produce the greatest practicable amount of marketable power. 43 U.S.C. 620f. Mandates of the CRSP Act that all revenues generated by CRSP be paid into the Basin Fund will be observed.

Legislated repayment obligations of projects will not be changed. In short, Western does not believe that any legislation exists that would prohibit project integration.

All revenues generated from the integrated projects will initially be placed into the Basin Fund. The Collbran and Rio Grande Projects revenue requirements, which are determined by their individual power repayment studies, will be treated as purchased power expenses to the CRSP. The SLCA Integrated Projects rate will be determined by an Integrated Projects power repayment study which will essentially be the CRSP power repayment study containing the purchased power costs for the Collbran and Rio Grande Projects.

As of September 30, 1985, Fiscal Year 1985 power repayment studies indicate that the Collbran composite rate should be increased from 19.30 mills per kilowatthour (kWh) to 22.70 mills, the Rio Grande composite rate should increase from 30.85 mills to 38.44 mills, and the CRSP composite rate increased from 9.92 mills to 10.35 mills per KWh. Using the CRSP PRS as the base study and treating the requirements of the smaller projects as expenses in the CRSP study, the resultant SLCA Integrated Projects rate would be 10.67 mills/kWh.

One commenter encouraged Western to implement the rate integration as soon as possible. In consideration of the possibility of early integration, the initial integrated projects rate might be implemented prior to the Post-1989 period, perhaps as early as the October 1987 billing period. Further information on this proposed rate, as well as the rate adjustment process and schedule, will appear in a future **Federal Register** notice. Concerned parties will be notified of this publication.

Due to presently unresolved problems, the Provo River Project has been excluded from those smaller projects to be integrated with CRSP. The Falcon-Amistad Projects will continue to be excluded from integration.

Western invited specific suggestions for the equitable distribution of the benefits from project integration. No proposals were received other than requests from the three customers of the smaller projects that they continue to receive the same power but at reduced rates.

Should contract commitments to existing customers of the smaller projects remain unchanged, only a few entities would benefit. This benefit is derived from the fact that the rate charged for SLCA Integrated Projects power would be considerably less than the rates for the separate projects from which these customers receive a share of their Federal power. To fairly distribute this benefit, Western proposes to reduce potential allocations to those customers of the smaller projects in order to share integration benefits and distribute them among all Northern Division customers. A financial analysis was performed which quantified the estimated monetary value due to project integration that the small project purchasers would experience without adjustment of existing commitments. This monetary benefit was translated into an equivalent amount of power, 50 percent of which was subtracted from existing commitments of the small project contractors. The remaining 50 percent was then included in the resource pool available to all other Northern Division customers. In this way, the small projects' customers and the other customers in the Northern Division share the benefits of project integration.

Project integration is estimated to benefit Northern Division customers by

$3.7 million annually. The difference between the proposed Integrated Projects rate and the proposed CRSP rate, multiplied by the energy purchased by all customers, gives the estimated cost of project integration: $1.6 million annually. Subtraction of this cost from the total benefit gives a net customer benefit due to project integration equal to $2.1 million annually.

With regard to the construction of additional transmission facilities for project integration, Western does not foresee any immediate need solely due to the integration initiative. Although Western does not have its own facilities to wheel the power generated at the Collbran and Rio Grande Projects, suitable arrangements will likely be made with the local utilities that have been receiving this power from Western since the inception of the projects. These facilities and arrangements appear to be adequate for integration given present circumstances.

c. Summary and Conclusion

Western concludes that the benefits of integration outweigh the costs due to integration of the resources from the Collbran and Rio Grande Projects with CRSP. Western will reduce potential allocations to existing purchasers of Collbran and Rio Grande resources so that a share of the benefits of integration of each small project is retained by the existing contractor(s) and to provide benefits for distribution among other Northern Division contractors. The integration of the Provo River Project has been deferred. Western will implement the SLCA Integrated Projects rate between October 1987 and October 1989. A separate rate adjustment process and schedule will be developed in a future **Federal Register** notice.

5. Contract Term

A 10-year contract term was retained in the 1984 Proposed Criteria, despite numerous requests from Customers for a longer term. The proposed 10-year term was supported on the basis of flexibility by one commenter, but most commenters provided numerous reasons why a contract term of 20 years or more is needed.

a. Comments

—Contractor resource decisions have already been made with the assumption that CRSP is available as a long-term resource.
—The 10-year contract period does not provide enough stability for planners to attract new industries and business to small towns and rural areas.
—The 10-year term is so short that the next allocation process must begin almost as soon as the new contracts are signed, which increases costs to both government and contractors.
—The 10-year term will provide an early opportunity for another attack on preference law.
—The congressionally-mandated terms for Hoover and Parker Davis power are 30 and 20 years respectively, demonstrating that the intent of policy makers is to commit long term.
—The 10-year term effectively eliminates needed time to develop effective resource and transmission coordination among the contractors and Western.
—A 10-year term will provide needed flexibility to assure that no constraint is placed upon the development of Upper Basin projects.
—A 10-year term of contract creates uncertainty as to the future availability of Federal power, considered a significant power resource by some customers. The resource is unpredictable and undependable when offered for 10 years.
—It is prudent for Western to market the hydro resources for an additional 25 years as this would make these resources available for the 50-year repayment period for these facilities.
—A longer contract term would provide greater security for repayment of existing and future resources, would be easier to administer, and would be more consistent with national environmental goals.
—A 10-year contract term does not coincide with generally accepted planning horizons in the utility industry.
—Western's concern regarding contractual commitments and current hydrology is not supportable.
—A longer contract term would limit attack on the "permanence" of Southern Division allocations.
—A 10-year term would discourage future investments, as the power allocation could not be used as security for a long-term loan associated with such an investment. The contract term should be 25 years.
—A 10-year term would perpetuate an already cumbersome bureaucratic process and increase uncertainty of preference users' power supply.
—Contract term should be longer than 10 years with the ability to adjust the commitment on the basis of hydrological conditions.
—Request a 5-year notice of reduction in commitments.

b. Discussion

A previous discussion by Western, presented in the September 1984 **Federal Register** notice, attempted to respond to similar comments requesting consideration of a longer contract term. The proposal was based on the need to preserve flexibility so that future Federal resources could be utilized where they are required in the event of changing legal or policy requirements. Western tentatively concluded that a 10-year contract term was the most prudent course of action.

Many comments noted the costly administrative burden associated with the reallocation process, possible recurring attacks on preference, and the financial uncertainty that would result should Western select a 10-year term.

Western acknowledges the significant administrative and financial burden that would result from selection of the 10-year term of contract. Recent comments stress the concern that such a contract term would require a continuous reallocation process that would preclude the development of desired resources or transmission coordination plans. Clearly, Western does not intend to place such a burden on the customers or Western's staff, and is interested in assuring sufficient time to develop mutually beneficial coordinated arrangements.

Western recognizes the strong desire of customers to maintain as much certainty as possible about future resources. Western continues to believe that (1) no absolute certainty exists about the availability of any resource, and (2) the economic benefits of Federal power should be sufficient incentive to dissuade construction of alternative resources.

Western believes that concerns about a shorter term of contract resulting in more frequent opportunities for change in preference law are not persuasive. Those entities desiring to change current preference provisions are free to lobby Congress to change the preference laws at any time. Lengthening contract terms will not likely decrease interest in changing preference laws as long as Federal hydroelectric power is available at an economically advantageous rate. More to the point, Western does not believe it appropriate to select a term of contract based on the objective of limiting congressional opportunity to reevaluate existing law and policy. Consequently, the selection of a contract term will be based on other factors.

Western recognizes the concern of municipalities with attracting new industry and business by maintaining a low-cost resource base. The economic dependence that many small communities and cooperatives have developed on Federal power is a condition to which Western is sensitive

Whatever the contract length, however, Western cannot assure contractors that rates of power will remain the same or that Congress will retain the cost-based rate principle.

Western believes that the establishment of a term of contract should be based on more than an individual commenter's desire to use a power contract as security for an investment. As other customers apparently do not see the lack of a 25-year contract term as impacting on future investment, Western declines to adopt such a contract length in these criteria.

The only comment received in favor of a 10-year contract term qualified this support by indicating that this term would provide needed flexibility to assure that no constraint would be placed upon the development of participating projects in the Upper Colorado Basin. Western believes that a 15-year term will also provide this flexibility.

Although Western believes strongly in retaining flexibility in responding to changes in the marketable resources, including hydrological conditions, it would be inappropriate for Western to be unresponsive to the overwhelming dissatisfaction with the proposed 10-year term. Western is therefore offering a 15-year contract term. Consistent with commenters who suggested that the contract term be extended with provisions for adjustments, Western proposes that the resource commitments be subject to adjustment to reflect possible changes in the marketable resources. This adjustment would be possible no earlier than 1999 and all customers would be given a minimum of 3 years notice prior to any possible adjustments. Adjustments may involve increases or decreases in commitments subject to changes in the marketable resources. Western is cognizant of the desire of some to have a 5-year notice. As a practical matter, any substantial change in expected commitment levels will be provided as early as possible. However, on the basis of recent experience, it is not prudent to commit to a period longer than 3 years.

c. Summary and Conclusions

After consideration of the many comments provided, Western concludes that a 15-year term of contract is an appropriate compromise. This 15-year term will include a 10-year resource commitment with, after a 3-year notification, the possibility of an adjusted commitment for the remaining 5-year period, if necessary. Western feels that this approach will provide sufficient flexibility to deal with changes in marketable resources.

E. Special Allocation Issues

1. Bureau of Reclamation Priority Uses

The 1984 Proposed Criteria provided for the reservation of additional amounts of power and energy requested by the Bureau of Reclamation (Reclamation) for designated priority uses. Project Use has historically included power and energy needed for loads such as project pumping for gravity irrigation. Pumping is required to lift water from water conveyance features or reservoirs, and includes relift pumps as necessary. Other Priority Use would include similar uses associated with supplying water for municipal and industrial use, sprinkler (pressurized) irrigation, and other applications associated with water deliveries from participating projects.

Other Priority Use reservations requested by Reclamation from Western are shown below, together with amounts reserved by Reclamation for Project Uses:

	Winter season		Summer season	
	MW	MWh	MW	MWh
Project use	27.26	32,760	126.72	250,730
Other priority use	11.60	14,340	48.90	88,830
Total	38.86	47,100	175.62	339,560

a. Comments

Reclamation (Upper Colorado Region) slightly increased estimates shown above for Other Priority Uses.

b. Discussion

Western is committed to cooperation with Reclamation to ensure successful development and operation of participating projects, and promotion of full realization of the purposes of the CRSP Act.

Western continues to recognize the importance of Project Use and Other Priority Use reservations to Reclamation and to the development of water projects in the West. These uses are vital to the economic viability of participating projects, contribute to the efficient use of water, and, in some cases, provide power for salinity control features. Western also recognizes the importance of making a clear distinction between the two uses.

Purposes for which Other Priority Use capacity and energy will be available will be limited, to avoid competition with local power suppliers. For example, Western has denied power to the Navajo Indian Irrigation Project for powering the electric motors which drive center pivot sprinkler systems. Some power needs arise as the result of Reclamation projects which neither Reclamation nor Western have an obligation to supply. These needs must be met by local power suppliers.

Since publication of the 1984 Proposed Criteria, Reclamation has increased estimates for Other Priority Uses for the post-1989 contract period. However, Reclamation has agreed that a reservation of Other Priority Use power based on its previous request of August 1983, will be stisfactory. If additional needs arise for either Project Use or for Other Priority Use, Western will comply with its 1980 commitment to Reclamation to satisfy these capacity and energy requirements through purchases on a pass-through cost basis.

Western will market any excess reserved capacity and energy on a short-term basis until the estimated Other Priority Use loads have developed.

As Reclamation projects are completed, Western will contract with the appropriate entity for Other Priority Use capacity and energy sales for the term of the repayment contract or water services contract, whichever is applicable. Other applicable terms and conditions of these criteria will apply to such contracts.

c. Summary and Conclusion

Reclamation has reserved capacity and energy for traditional non-growth-related Project Use loads. Western will reserve additional firm capacity and energy, as Reclamation requested in August 1983, for Other Priority Uses. Capacity and energy will be available for Other Priority Uses under the terms of these criteria, except that the term of contract will be concurrent with the applicable repayment or water service contract.

2. Albuquerque Operations Office

In the 1984 Proposed Criteria, Western discussed the proposed special treatment for the Department of Energy's Albuquerque Operations Office (DOE/Albuquerque) due to unique historical circumstances. Western concluded that, given the shared responsibility for the lack of consummation of a 30 MW contract with Reclamation and the Public Service Company of New Mexico, the granting of a special allocation of 15 MW of power without energy in each season would be continued in the post-1989 period.

a. Comments

DOE/Albuquerque has restated their claim that treatment by Reclamation

and Western was inequitable. DOE/Albuquerque requests that Western provide energy with the additional 15 MW of capacity proposed in the post-1989 period.

b. Discussion

No additional comments have been provided which would cause Western to change this proposed treatment. In addition to being eligible to receive an allocation as an existing customer from Resource Pools 3 and 4, and a special allocation, DOE/Albuquerque also fulfills the requirements of a "Participating Customer," that is, an existing customer presently receiving less than 25 percent of their total energy requirement from Federal sources. This determination will result in the potential further allocation to DOE/Albuquerque from Resource Pools 5 and 6, those seasonal resource pools reserved for Participating Customers. An additional change since the 1984 Proposed Criteria is that Pools 5 and 6 have been increased by 25 MW.

Another change that can benefit customers such as DOE/Albuquerque who are now peaking contractors is the modified allocation methodology for Northern Division existing customers. As discussed below, the new allocation method would give consideration to the amounts of peaking power that an existing customer presently receives in the determination of post-1989 allocations from Resource Pools 3 and 4. This method will result in a modest increase in the potential allocation to DOE/Albuquerque.

c. Summary and Conclusion

DOE/Albuquerque will be eligible to receive an allocation as an existing customer in accordance with the new allocation methodology, an allocation of 15 MW without energy in both seasons as a "special case," and an additional allocation as a Participating Customer. No additional special consideration is warranted.

3. Enterprise and Hurricane, Utah

In the September 1984 **Federal Register** notice, Western discussed in detail the significant events that occurred concerning the cities of Enterprise and Hurricane, Utah, in the initial allocation of CRSP power in 1963. In recognition of the responsibility that the United States shared in the misunderstanding, Western proposed tentative "special case" allocations. These special allocations were derived by taking 50 percent of each city's 1975 summer season and 1975–76 winter season peak loads. This basis was selected since the CRSP power that the cities failed to obtain in 1970 was based on each customer's estimated 1975–76 summer and winter peak loads.

a. Comments

Both Enterprise and Hurricane requested an allocation of 100 percent of their 1975–76 requirements, and failing that, requested priority in obtaining power available for reallocation.

b. Discussion

An Intermountain Cooperative Power Association (ICPA) official has advised Western that an agreement was made at the time Enterprise and Hurricane were prepared to receive Federal power, whereby ICPA members agreed to provide power at Federal rates to these cities until the next allocation was made. This was intended to carry out ICPA's share of the responsibility in this misunderstanding. It was understood by ICPA and the cities that the cities would be reinstated in the next allocation as if they had not lost their initial allocations.

Western does not believe the entire responsibility for the misunderstanding rests with the government. ICPA was granted diversity benefits from the United States that are used to provide Federal power to these cities. This does suggest that substantial responsibility for the misunderstanding was assumed by the government at the time these arrangements were being made. On the other hand, no written agreement assures the cities of a specified level of power in a future allocation.

c. Summary and Conclusion

Western proposes no change in the initial "special case" allocations to Enterprise and Hurricane, Utah, in the amounts indicated in the September 1984 **Federal Register** notice. However, Western will give first-right-of-refusal on any energy and associated capacity to be reallocated, up to an amount which would not exceed the remaining 50 percent of Enterprise and Hurricane's 1975–76 peak energy and capacity needs. Western will give each city "proportional" priority to the pool of capacity and energy available for reallocation should the amount available be less than the approximately 2 MW needed to reach the maximum potential allocations proposed.

F. Other Issues

1. Classes of Service

In the September 1984 **Federal Register** notice, Western proposed to offer long-term firm power with energy, short-term firm power with or without energy, and other services, such as interchange, emergency or maintenance service, transmission service, and nonfirm energy service. Discussion was presented supporting Western's proposal to offer a single class of long-term firm service, that is, to no longer offer peaking capacity.

a. Comments

—Serious consideration should be given to offering a certain amount of peaking power.
—Eliminating peaking power will result in increased fuel consumption.
—Unclear what is meant by the term "peaking power."

The request by one commenter that Western reserve a portion of the marketable firm capacity to be used as a peaking resource is similar to comments previously received on the subject. Considerable discussion was presented by Western in the September 1984 **Federal Register** notice (49 FR 34924–25) which supported the proposal of selecting long-term firm energy as the single class of long-term service to be offered in the post-1989 period. That discussion will not be repeated here. Applicants will be permitted to choose the amounts of long-term seasonal firm capacity they prefer with their share of firm energy within limitations. Western had intended this arrangement to allow customers the flexibility to request the specific amounts of capacity necessary to meet individual load requirements. Western continues to believe this approach would meet the needs of most customers.

To clarify one concern expressed over the use of the term "peaking power," peaking power represents an existing class of service offered by the SLCAO which is firm capacity without associated energy, used by existing customers to meet that portion of load which is above base load. This product was offered in 1978 as a result of construction of additional CRSP facilities. The added capability of these new facilities were then offered to existing customers as a long-term resource without increasing Western's energy obligation. This, in essence, reduced the load factor at which the total firm power and energy was available to those customers accepting additional capacity. Just because additional capacity will be marketed in the post-1989 period, the conclusion that increased fuel consumption will result does not necessarily follow.

c. Summary and Conclusion

Western concludes that the proposed classes of service presented in the criteria meet the needs of most customers and will not increase fuel

consumption. Consequently, the proposed classes of service are included in the criteria.

2. Derivation of Marketable Resources

In the 1984 Proposed Criteria, Western proposed that capacity available from the SLCA Integrated Projects would be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grande and Provo River Projects and on the capacity of the CRSP powerplants based on 90 percent probability from 1989 to 1999. Energy would be based on average conditions projected for this same time period. An option to purchase up to 400 GWh of additional energy at the customer's request was also included. Western proposed to purchase certain firming capacity and energy on a pass-through cost basis. Only reserves and requirements for Reclamation's priority use loads were deducted from capacity available at plant to arrive at marketable capacity, since losses were assumed to equal diversity. Average energy generating at plant was reduced by losses and requirements for Reclamation's priority use loads. Reserves equal to 174 MW in both seasons to cover the largest single contingency were determined to be appropriate. Future resources as a result of possible future uprates or additions were addressed in footnotes to tables in Appendix A and B.

a. Comments

—Skewing of distribution, especially in lower quartile, may result in over estimation by Western of available generation and capacity. Question the statistical methodology used to determine the capacity and energy at given probability levels. Western's assumption that the data fits a normal distribution is incorrect.
—Selection of the 90 percent exceedance level for capacity is supported.
—Western should consider offering additional operating capacity based on a lower probability level and let preference customers decide whether they wish to accept the risk.
—Question why CRSP powerplants are treated differently than those of the Collbran, Rio Grande and Provo River Projects regarding the exceedance probability levels selected.
—According to application of average energy generation, Western would be explicity marketing non-Federal energy in most years.
—Energy figures for the Rio Grande Project differ from the November 1983 proposed power rate adjustment brochure.
—Support concept of maximizing the availability of both long-term and short-term power with energy, rather than selling nonfirm capacity to peaking power contractors.
—Western could economically purchase significantly more than the proposed 400 GWh annually and should increase purchase level up to 800 GWh, annually.
—Encourage increasing firming energy purchase up to 800 GWh or up to 1200 GWh to allow the post-1989 resource to more closely approximate the present CRSP resource.
—Western does not have the authority to sell power or energy on a long-term basis it knows will not be produced at Federal facilities. Purchases for firming are illegal.
—Western should reconsider its earlier position on the proposed reserve level of 174 MW and lower reserves to be consistent with current IPP reserve requirements.
—New resources from uprates should be offered to Northern Division customers only.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Hydrology Studies;
(2) Level of Purchases;
(3) Reserves; and
(4) Future Uprates and Additions.

(1) *Hydrology Studies.* Detailed discussion was provided in the 1984 Proposed Criteria which indicated that the Bureau of Reclamation's Colorado River Simulation System (CRSS) computer simulation model was used to generate monthly estimates of capacity and energy for the 10-year period from 1990 to 1999 for CRSP alone. The data base used by the CRSS model included 78 years of historic records (1906–1983) used to simulate future conditions. The resultant estimates for future CRSP generation and capability were then analyzed to determine selected probability levels for capacity and energy for the post-1989 contract period. The results of this probability analysis are presented in two separate tables (Table A–1: Summary of Selected Probabilities, Capability and Table A–2: Summary of Selected Probabilities, Energy). The CRSP capacity values indicated for the 90 percent exceedance level and the CRSP energy values listed for seasonal mean energy were used in the Proposed Criteria for "Power At Plant—CRSP" and "Average Generation—CRSP", respectively. In addition, further discussion was presented in support of the selection of the 90 percent exceedance level for marketable firm capacity.

Strong support for the selection of a 90 percent exceedance level for capacity was presented in the September 1984 **Federal Register** notice. Since no new information has been provided, Western will not repeat that discussion, and will adopt its proposed selection.

In the 1984 Proposed Criteria, Western stated that the monthly CRSP energy and capacity estimates from the CRSS study were assumed to be normally distributed. One commenter questioned this assumption after consideration of the capacity and energy values presented in Tables A–1 and A–2. This statement by Western was said to be an incorrect explanation of the analysis of monthly energy and capacity estimates to determine the associated exceedance levels.

The distribution of monthly CRSP energy and capacity estimates do not have a normal distribution, that is, they do not fit a bell-shaped curve, and are negatively skewed. Negative skewing reflects the fact that in the critical load months of January and August, the number of estimated occurrences is greater for larger values of available capacity. However, the selection of the available CRSP capacity at the 90 percent exceedance level was based upon consideration of the calculated cumulative relative frequency of occurrence for all capacity values for all months. Therefore, the actual probability distribution was used as the basis for determination of available capacity. Simplifying assumptions as to the shape of the distribution curve were not used. Therefore, the 90 percent exceedance levels for CRSP capacity were properly selected. No correction is required.

Similarly for CRSP energy, the selection of the total seasonal mean energy value was based upon the arithmetic mean of energy estimates for all months in each season. By consideration of the actual distribution of CRSP energy estimates, it was clear that the selection of "average" seasonal energy more closely resembles an exceedance level of approximately 38 percent. This probability level translates into the expectation that roughly 6 years out of 10 or 60 percent of the time, Western would anticipate purchasing energy to meet CRSP firm energy commitments equal to the "average" seasonal energy. "Average seasonal energy" was not intended to be represented as synonymous with a 50 percent or median probability level.

For estimates of available capacity from the Collbran and Rio Grande

Projects, which include the Upper and Lower Molina powerplants and the Elephant Butte powerplant respectively, the maximum operating capabilities were assumed to be a reasonable assumption for marketing purposes. This liberal estimate of available capability is a simplified assumption due to the lack of an acceptable simulation model for either facility and also due to the minor additional capacity and generation of these smaller projects with respect to that of CRSP. The Collbran Project's maximum plant capacity of 14 MW is less than 1 percent of that of CRSP (1691 MW). The Rio Grande Project's maximum plant capacity of 27 MW is less than 2 percent of that of CRSP. In the absence of computer simulation models for these projects and in consideration of their relative size in comparison to CRSP, estimates of average generation were based solely on historical generation.

The estimate of average seasonal generation for the Molina units is 58.50 GWh annually and is based on historic generation for the 20-year period from 1965 through 1984. The estimate of average seasonal generation for the Elephant Butte powerplant is 60.93 GWh annually and is based on the same 20-year period. These estimates for annual average generation differ from those presented in the 1984 Proposed Criteria. A 5.20 GWh increase in Collbran generation, a 0.23 GWh increase in Rio Grande, and deletion of Provo River generation of 18.90 GWh results in a decrease in total average generation at plant of 13.45 GWh. Deletion of Provo River capability of 5 MW represents a decrease in power at plant of less than 1 percent.

Estimated generation for CRSP, Collbran, or the Rio Grande Projects may differ from previous publications. This difference is attributed to the basis for determination of average energy generation estimates. For this marketing plan, it was believed that the most recent 20-year period, from 1965 through 1984, would provide a reasonable estimate of possible generation. Earlier estimates of generation will differ based on the historic period considered.

A special study has been prepared by Western documenting information used in the development of estimates for capability and generation for the individual projects of the SLCA Integrated Projects for the post-1989 period. This study, entitled Power Resources Study, December 1985, is available from Western upon request at the address provided above.

(2) *Level of Purchases.* Most commenters supported an increase from the proposed annual 400 GWh purchase in an average year up to a level of 800 GWh. One commenter suggested an average year purchase level as high as 1,200 GWh annually. The concept of pass-through of purchase costs was also strongly supported.

Results of the environmental assessment which considered alternative purchase levels, as well as differing purchase pass-through philosophies, conclude that the economic impact to typical representative customers in the Northern and Southern Division of the SLCA Integrated Projects market area due to changes in the annual energy purchase level, that is, 0 versus 400 versus 800 GWh, in an average year, would be inconsequential, either in the impact to estimated short-run or long-run retail rates or in retail consumption. Based upon the results of the Post-1989 EA, Western has determined that the 400 GWh level of purchase is reasonable. This level of commitment may require purchases of over 3,000 GWh in an adverse year, which will substantially utilize all of the SLCA Integrated Projects purchasing capability. In years when generation exceeds the long-term average, purchases will be less than 400 GWh.

In the 1984 Proposed Criteria, Western fully supported the legality of firming purchases. Power marketing administrations have inherent authority to purchase power and energy reasonably incidental to the integration of a hydroelectric project. The present proposal falls within that authority.

Western has determined that purchases required to provide energy commitments at a 58.2 percent load factor level would be approximately 1,450 GWh in an average water year. As the purchases in an adverse year at this commitment level would be beyond the capability of the system, Western concludes that such an energy commitment is not viable.

(3) *Reserves.* In the 1984 Proposed Criteria, Western proposed to increase the initial proposal of 145 MW of reserve capacity to 174 MW in both summer and winter seasons, based on the size of a single Gen Canyon generating unit. In addressing a suggestion that Western consider combining reserve requirements of the SLCAO and LAO, Western stated in the September 1984 **Federal Register** notice that such pooling would have little effect in reducing reserve requirements. However, recent studies, performed by Western in October 1984, addressed the possible impacts to Western should membership in the current Inland Power Pool (IPP) change. Based on the assumptions that (1) minimum power pooling participation would include three of Western's control areas, the Upper Colorado (WAUC), the Lower Colorado (WALC), and the Lower Missouri (WALM), and that (2) historical peak load data for critical months in 1983 and 1984 would be representative, estimates for operating and spinning reserve requirements for peak months were prepared. These estimates further assumed that current IPP methods for determination of operating and spinning reserve amounts would remain unchanged.

The studies demonstrate that the SLCA Integrated Projects need only provide approximately 114 MW of total operating reserve, or approximately 60 percent of the total system reserve requirement of 196 MW for the three Western control areas. This estimate is based on the sum of the largest single hazard (LSH) for the system (LSH=174 MW) and 1 percent of the total system load (LS) for the peak month (LS=2236 MW, 1 percent LS=22.36 MW) multiplied by the estimated Reserve Responsibility Ratio (RRR=0.58) for the WAUC.

This lower reserve level translates directly into an additional 60 MW of marketable firm capacity in both seasons. The total adjusted marketable firm capacity amounts would then be approximately 1,450 MW in the winter and 1,352 MW in the summer, or an approximate increase of 4 percent for each season. Lower reserve requirements would complement Western's objective in marketing the greatest practicable amount of firm capacity at firm power rates. This determination would be balanced against the need for adequate reserves and intermittent availability of capacity and nonfirm energy deliveries, as short-term operational needs dictate.

Western has decided that the most equitable and effective compromise for distribution among all customer groups of the additional resource resulting from lower reserve requirements would be to add approximately 25 MW with associated energy to the Participating Customer Pools, Resource Pools 5 and 6. The remainder, approximately 30 MW of capacity and associated energy, would be placed into a newly designated C&RE Incentive Program Pool. For details on this program, see Section D.2.b(4).

(4) *Future Uprates and Additions.* Although not specifically addressed in the Criteria, Reclamation has taken actions to pursue the uprating and rewinding of units at Flaming Gorge and Blue Mesa powerplants of CRSP. The uprates that have been tentatively scheduled by Reclamation, as of November 13, 1985, are as follows:

	No. units of	Unit capability (MW)[1]					Completion date
		Exist	Total	Uprate	Total	In-crease	
Blue Mesa	2	36	72	48	$96.00	24	Fed. 1988.
Flaming Gorge	3	44	*132*	50	*150.00*	18	Apr. 1989.
			204		246.00	42	

[1] Assumes maximum operating capability at unity (100 percent) power factor.

Questions that remain are: (1) How should such potential uprates and additions be treated in post-1989 marketing; and (2) who should receive the benefits of these additional resources should they be made available to SLCA Intergated Project customers.

The 1984 Proposed Criteria indicated that these uprates were in the preliminary planning stages, and at the time of publication, the completion dates were only tentative. In addtion, these uprates are not expected to increase the long-term marketable capacity at the 90 percent exceedance level. When hydrological conditions permit, this additional capacity will be offered for sale on a short-term basis after it goes into service.

One commenter has suggested that any new resources be offered to Northern Division customers only. Any additional long-term resources, such as from the proposed Diamond Fork development, will be offered under a separate public process. The terms and conditions of short-term offers can be developed most appropriately at the time those offers are made. Consequently, this comment does not have relevance to the development of these criteria.

c. Summary and Conclusion

Western has selected the 90 percent exceedance level for CRSP capacity, maximum operating capacity for Collbran and Rio Grande, and the selection of average seasonal energy generated for Collbran and Rio Grande Projects.

Western has selected energy commitment levels that exceed average seasonal energy generated by an annual total of 400 GWh for the CRSP.

Western has chosen a lower reserve level of 114 MW, as a result of a recent reserve study. This reduced level represents a 60 MW decrease in proposed reserves in both seasons from the 1984 Proposal Criteria.

The availability of additional capacity as a result of uprates are not expected to increase the long-term marketable capacity at the 90 percent exceedance level. Therefore, Western will offer any additional capacity for sale on a short-term basis subject to conditions that exist at that time.

3. General Allocation Issues

The September 1984 **Federal Register** notice presented an Appendix B which established proposed bases for allocations. Resource pools were defined for the summer and winter seasons for each of the customer groups identified, that is, Southern Division existing, Northern Division existing, and Northern Division participating customers. Also included were two additional appendices. Appendix C provided hypothetical allocations to Northern Division customer groups, Resource Pools 3 through 6. The basis for hypothetical allocations to Northern Division existing customers (Resource Pools 3 and 4) was their existing firm contract rates of delivery (CROD). Existing individual peaking commitments were not considered in the allocation process. Hypothetical allocations for Participating Customers (Resource Pools 5 and 6, potential new customers and certain existing customers) were based on historic loads and limited to the amount of energy associated with 3.5 MW of capacity. Appendix D provided five alternative methods for adjusting Southern Division existing customer commitments, to effectively distribute Resource Pools 1 and 2.

a. Comments

—Existing peaking allocations should be considered in the allocation methodology for existing customers.
—Request that Western grant larger allocations to customers serving a greater percentage of total load within an area.
—Recommend the selection of Southern Division Alternative 3 as a "pragmatic compromise."
—Support Southern Division Alternatives in the following order of priority: 2, 1, and 3. Alternatives 4 and 5 are not acceptable.
—Request that allocations be increased.
—Alternative 4 is preferred.
—Allocations to new customers are too small. Less than 1 MW allocation may be a problem for customer who must wheel power over a third-party transmission system.
—Western's proposal to allocate only a small fraction to new customers contradicts "widespread use."
—Western should offer first right of refusal of any unsubscribed resources to those contractors with peaking and who lost capacity in reallocation.
—Supports proportional reallocation to new customers that have received less than requested.
—Allocations to joint action agencies questioned.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Northern Division Allocation Methodology.

(2) Southern Division Allocation Methodology.

(3) Limit on Energy Allocations.

(4) Reallocation Process.

(5) Other Allocation Issues.

(1) *Northern Division Allocation Methodology.* Hypothetical allocations for Northern Division existing customers, as shown in the September 1984 **Federal Register** notice, were calculated based on an entity's existing firm power commitment. Because the resource to be marketed in the post-1989 period is firm energy and associated capacity, Western felt that an equitable allocation methodology might be based on existing firm commitments only. As mentioned above, hypothetical allocations for Resource Pools 3 and 4 were presented in Appendix C of the 1984 Proposed Criteria.

Potential new customers submitted applicant profile data which included historic load data from 1980–82. These 3 years of historic load data were used to determine an entity's portion of the winter and summer capacity and associated energy pools reserved for Participating Customers. Participating Customers were defined in Appendix B to include potential new customers plus those existing customers who were entitled to receive less than 25 percent of their average energy requirements during 1980–82 from Federal resources that were committed on a long-term basis, and those who receive allocations based on special circumstances. An entity's potential allocation was limited to 10,066 MWh of annual firm energy or the energy equivalent to 3.5 MW of firm capacity.

Several Northern Division customers submitted comments on the proposed Northern Division allocation methodology presented in the September 1984 **Federal Register** notice. Most comments were supportive of the proposed methodology; however, some

commenters expressed concern that existing peaking allocations were not being considered in formulating an allocation methodology.

In response to public comment, Western has developed an allocation methodology for existing customers which would benefit those customers with existing peaking capacity commitments, but would not be inequitable to those customers without peaking. It was noted that the proposed allocation methodology greatly benefitted those customers without peaking capacity allocations at the expense of those contractors purchasing peaking capacity. Peaking contractors were unable to retain any benefits from their existing peaking allocations, and some customers with large peaking allocations felt unfairly treated.

The new allocation methodology developed for Northern Division existing customers is based partly on the ratio of a customer's existing firm capacity to total existing firm capacity commitments, and partly on the ratio of a customer's existing firm plus peaking capacity entitlements. First, the total resource energy pool is split into two components; a portion of the energy pool determined from the proportion of existing firm capacity to total firm and peaking capacity, and the remaining portion determined from the proportion of existing peaking capacity to total firm and peaking capacity. These components are then referred to as those portions of the total resource energy pool "associated with firm" and "associated with peaking," respectively.

The ratio of each customer's existing firm capacity to the total firm capacity for all Northern Division existing customers is applied to the resource pool component "associated with firm." Next, the ratio of each customer's existing firm and peaking capacity to the total firm and peaking for the entire Northern Division existing customer group is applied to the resource pool component "associated with peaking." Each customer's firm component and peaking component are then added to derive a total individual energy allocation.

The methodology described above can best be understood by consideration of the following equation:

$$\text{ALLOCATION, RESOURCE POOL (F+P)} = \left[\frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}}\right] \times \text{RES. POOL "FIRM" (t)} + \left[\frac{\text{CRSP, (F+P)(i)}}{\text{CRSP, (F+P)(t)}}\right] \times \text{RES. POOL "PEAK" (t)}$$

CRSP, F	=	REPRESENTS EXISTING INDIVIDUAL (i) OR TOTAL (t) FIRM CAPACITY ENTITLEMENT.
CRSP, (F + P)	=	REPRESENTS EXISTING INDIVIDUAL (i) OR TOTAL (t) FIRM + PEAKING CAPACITY ENTITLEMENT.
RESOURCE POOL, FIRM	=	REPRESENTS AMOUNT OF RESOURCE POOL "ASSOCIATED" WITH FIRM ENERGY.
RESOURCE POOL, "PEAK"	=	REPRESENTS AMOUNT OF RESOURCE POOL "ASSOCIATED" WITH PEAKING ENERGY.

The following is a hypothetical example of application of this new allocation method to two dissimilar customers; Customer 1 without a contract commitment of peaking capacity and Customer 2 with a peaking capacity commitment.

1. EXISTING COMMITMENTS:

	EXISTING CROD (MW)		
	CUSTOMER 1	CUSTOMER 2	TOTAL COMMITMENT
PEAKING (MW)	0	5	200
LONG-TERM FIRM (MW)	10	10	800
TOTALS	10	15	1000

2. NEW RESOURCE POOL:

"ASSOCIATED FIRM" = 1600 GWh
"ASSOCIATED PEAK" = 400 GWh

2000 GWh (Assumed)

3. NEW METHOD:

CUSTOMER 1:

$$\left(\frac{10}{800} \times 1600\right) + \left(\frac{10}{1000} \times 400\right) = \text{ALLOCATION}$$

$$20 + 4 = 24 \text{ GWh}$$

CUSTOMER 2:

$$\left(\frac{10}{800} \times 1600\right) + \left(\frac{15}{1000} \times 400\right) = \text{ALLOCATION}$$

$$20 + 6 = 26 \text{ GWh}$$

Using the September 1984 method, the allocations of Customers 1 and 2 would have been the same. Using the new allocation method, Customer 2 would receive a slightly larger allocation due to its existing peaking capacity allocation. Note that the energy resource pool has been split into two components and that these components are distributed based on a ratio of capacity, as previously described. The resultant allocation is then an energy allocation.

A number of commenters requested changes in allocation methods that would be beneficial to them. Western is making three improvements to the distribution of resources: (1) By enlarging the participating customer pools, potential new customers will receive somewhat larger allocations; (2) by introducing the peaking commitments to existing customers in the Northern Division, additional equity among customers is achieved; and (3) by reinstating the allocation limits on existing customers greater equity among customers is achieved. Other suggestions for changing allocation methods, such as allocating on the basis of the percentage of area loads served, were not adopted because they would result in a more extreme redistribution of resources than Western thought advisable.

Since no comments were received on the allocation method for distribution of the resources reserved for Participating Customers, the method proposed in 1984 proposed criteria has been adopted.

(2) *Southern Division Allocation Methodology.* The 1984 Proposed Criteria presented five alternative methods for adjustment of the Southern Division commitment to existing customers, including a method that considered existing peaking commitments. The results of hypothetical allocations were presented in Appendix D. The basis for adjustment for each method is summarized as follows:

Adjustment method	Basis for adjustment
1	CRSP firm, only.
2	CRSP firm, + peaking.
3	CRSP firm, + other Federal res.
4	Total Federal res. (energy).
5	CRSP firm, only (variation on method no. 1).

The majority of the written comments supported the selection of Alternative Method 3, which considered adjustment based on the ratio of CRSP firm and the ratio of Other Federal Resources received by existing Southern Division customers. Other Federal resources were defined as the Boulder Canyon Project (BCP) and the Parker-Davis Project, excluding BCP uprates. The majority of commenters qualified this selection of Alternative Method 3 by indicating that the alternative was a pragmatic compromise and that it would appear to favor the greatest majority of Southern Division customers. Boulder Canyon Project uprates were not included as part of the Federal resources due to their unique character. The Hoover Power Plant Act of 1984 provided for the uprating of the Hoover generation. All capacity resulting from the uprates was allocated by Congress. The uprating will be accomplished by non-Federal financing and allottees will be required to front the funds for the uprating. Because of the non-Federal financing, the resources were considered as distinguishable from projects financed purely by Federal funds. As such, any consideration of the uprated resource under these Criteria was considered to be inappropriate.

3. *Limit on Energy Allocations.* In the August 23, 1983, **Federal Register** notice, Western presented a limit on capacity allocations such that no applicant would receive an allocation so that its total post-1989 firm power entitlements from all Federal sources exceed its average peak demand for the 3-year period ending with 1982. In the September 1984 proposal, Western supported its initial intent of wishing to correct any previous excessive commitments of Federal power in relation to a customer's total load. Western concluded that this was ". . . not a significant problem. The proposed limitation would have affected very few organizations." It seemed apparent that those customers who had established load management or conservation programs during 1980 through 1982 might be penalized for having reduced peak demands and energy usage. This was clearly not the intent, and so Western eliminated the limitation.

Upon reexamining the discussions presented in the September 1984 proposal, Western realized that when the 1980 through 1982 peak demands for all customers were compared to results of the latest hypothetical allocation methodologies, a number of customers were discovered to have reached the limitation on capacity in one season. By implementing this limitation, approximately 38 MW would have been reclaimed and made available to other customers within the same customer category. Western then decided to reevaluate this limitation as a possible improvement to allocation

methodologies with the objective of providing more equity among existing customers without basing allocations solely on existing loads.

Since Western is allocating energy and allowing the customer the flexibility of choosing the amount of capacity they prefer with their share of energy, subject to system capability and limitations imposed by the needs of others, allocation limitations should limit energy rather than capacity.

Western's intent is not to penalize those customers who have established effective conservation programs and who have therefore experienced a decrease in annual energy usage for this period.

Therefore, Western will make adjustments in allocations for those customers who can convincingly demonstrate that conservation was the reason for the reduction in their 1980–1982 energy use. Therefore, it is strongly recommended that all customers who may have experienced such a load reduction as a direct result of conservation activities should provide sufficient documentation along with formal application for power if they think they may be subject to the limit on energy allocations.

(4) *Reallocation Process.* The 1984 Proposed Criteria included a proposed provision which indicated that allocations reduced or rescinded during the allocation or contract negotiation process may be administratively reallocated. Two comments were received relevant to this proposal. The first comment suggested a first-right-of-refusal be given to peaking contractors. The second suggested that reduced or withdrawn allocations be proportionately reallocated to new customers who received less than requested.

The suggestion to provide a first-right-of-refusal to existing peaking customers would be more convincing had Western not revised the allocation methodology to Northern Division customers. As such, the new method gives additional consideration to existing peaking customers. Also, since applicants have some flexibility in the amount of capacity to be associated with their allocation of from energy, no further special treatment of peaking customers is warranted.

The comment suggesting new customers be offered these reduced or withdrawn amounts of energy and capacity has some appeal. After reconsidering the treatment of the cities of Enterprise and Hurricane, Utah, Western has provided both entities a limited first-right-of-refusal to available resources. For details, refer to Section E.3. Beyond that commitment, Western desires to maintain flexibility in any redistribution of reduced withdrawn allocations. These amounts are expected to be relatively small, and Western's Administrator may reallocate them without further public process.

(5) *Other Allocation Issues.* In the September 1984 **Federal Register** notice, members of a joint action agency were given hypothetical allocations based on their individual filing of applicant profile data. The joint action agency was not identified as a potential allottee, and expressed concern.

Distribution level utilities should decide whether to apply independently for power, or whether the joint action agency to which they belong should apply on their behalf. Whether the joint action agency is entitled to preference will obviously be a consideration. The entity receiving an allocation will be entitled to execute contracts with Western. Any desire by allottees to have Western reassign allocations to other organizations will be considered on a case-by-case basis. Western clearly prefers that those entities that will become the contractors also be the initial allottees hereunder. As a matter of general policy, Western expects the benefits of Federal power will be distributed proportionally by a wholesale entity to each of its preference members who are located within the market area of the resource being distributed.

The issue raised by one commenter relating to scheduling over third-party transmissions systems will be addressed during the contract negotiations period.

c. Summary and Conclusion

Western adopted a new Northern Division allocation methodology for existing customers to provide for consideration of those existing customers with peaking power contract commitments. The methodology for participating customers will remain unchanged.

Alternative Method 3, Adjustment of Southern Division based on the ratio of summer season CRSP and the ratio of Other Federal resources, was selected.

The additional 55 MW and associated energy made available by the lowering of reserves from the level discussed in the 1984 Proposed Criteria will be distributed between the Participating Customer Pool (25 MW with energy) and the newly designated C&RE Incentive Program Pool (approximately 30 MW with energy). The Participating Customer Pool will thus increase from 75 MW to 100 MW. The C&RE Incentive Program Pool will be created to promote development of effective conservation and renewable resources programs. It will also provide an opportunity to evaluate the use of C&RE programs as an eligibility criterion for obtaining allocations. Details of the C&RE Incentive Program will be developed through a future public participation process.

Western will limit seasonal allocations of SLCA energy such that, when combined with its total post-1989 Federal firm energy entitlements from other Federal sources, an applicant will not exceed its average seasonal energy usage for 1980–82. Adjustments will be allowed for those who convince Western that conservation was the cause for reduction in energy use for this period.

The first 2 MW of allocations reduced or withdrawn shall be reallocated by offering a limited first-right-of-refusal to this resource to the cities of Enterprise and Hurricane, Utah. Any remaining amounts of firm energy and associated capacity will be reallocated by Western's Administrator without further public process.

4. Contract Issues

The September 1984 **Federal Register** notice stated that Western would: (1) Pass through the costs of firming capacity and energy to the customers, if the customer desired such purchases be made; (2) refrain from discussing the details of the pass-through mechanism until the contract development process; (3) maintain the 35 percent minimum schedule requirement with provisions for modification as appropriate; (4) add Elephant Butte Powerplant as an additional Federal Point of Delivery; (5) delete Casper, Glenrock, Thermopolis, and Yellowtail FPODs; (6) allow trading of capacity only between customers within the same division during the allocation process; and (7) would require a monthly notice to consumers providing information on the components and costs of power.

a. Comments

—Support passing through costs of 400 GWh of purchased energy on an annual basis.
—All costs associated with purchased energy, including interest, should be passed on to the customers.
—Support the passing through of purchased energy costs using an energy balancing account.
—Western should not change minimum scheduled rates of delivery without discussion with the contractors or without proper notice.
—Support the current 35 percent minimum schedule requirement.

—Support maintenance of the Elephant Butte Powerplant at the 6.9 kV voltage.
—Oppose elimination of the Thermopolis, Casper, Glenrock, and Yellowtail FPODs.
—Exchange of capacity should occur on a seasonal basis.
—The requirement for the trading partner to be in the same division should be eliminated.
—Clarify the method by which Western expects its customers to "break-out" Federal power costs from non-Federal costs.
—The proposed Resale article would be unduly burdensome if reports on the costs of power were required to be detailed to retail customers on a monthly basis.
—Unclear what was meant by allottee purchasing agent.

b. Discussion

The above comments have been groups for discussion into the following numbered categories: (1) Pass Through of Purchase Costs; (2) Minimum Scheduled Rate of Delivery; (3) Delivery Conditions; (4) Annual Exchange of Capacity; (5) Resale Provisions; and (6) Other Contract Concerns.

(1) *Pass Through of Purchase Costs.* As summarized above, the 1984 Proposed Criteria stated that Western would pass on to its customers the expense of all purchases of capacity and energy. Western was interested in how this proposed pass-through approach would affect its customers and what kinds of financial obligations would be incurred. An analysis was included in the Post-1989 EA to avoid selecting an option that might result in financial demands on customers that could not be met. In the Post-1989 EA, Western identified "typical representative customers" which were used to gauge the impact of various pass-through approaches. Based on the approach employed in the EA, impacts to retail rates of these typical representative customers were estimated for each of the three pass-through methods considered. These three methods considered (1) all purchased capacity and energy directly passed on to the customer (Total Pass-Through), (2) limits to possible purchases of both capacity and energy passed on (Modified Pass-Through), and (3) a no pass-through approach in which all purchase expenses were blended into the project rates, whereby all customers would share in repayment of purchase costs (No Pass-Through).

These analyses showed that the impact on the estimated retail rate to the ultimate consumer under either pass-through methodology were insignificantly different from the method in which no costs were directly passed on, except in dry years. The estimated retail rate in dry years under the total pass-through methodology differed from the total blended methodology by as much as 18 percent. An increase in power costs of this magnitude during dry years could result in unexpected financial obligations that could not be met by some contractors.

Comments opposing blended rates were concerned that purchase costs could adversely affect revenues available for further project development or that the blended rates would remove price incentives for conservation by disguising costs of purchases. All purchase costs have been blended into the CRSP rate for the first 25 years of operation. This has not been detrimental in developing rates that provide all required revenues for project development. Since customer price incentives for conservation arise primarily from the cost of non-Federal power and the availability of low-cost Federal power is limited, this argument was not considered persuasive enough to prevail.

In general, the Modified Pass-Through approach resulted in estimated retail rates that were less than half the difference between the No Pass-Through approach and the Total Pass-Through method. Hence, this Modified Pass-Through method is more economically viable than the Total Pass-Through approach that was supported by several commenters. Moreover, it is preferred to the No Pass-Through method for two reasons: (1) Since the decision to purchase is an option to the customer, it seems appropriate that those who prefer an improved load factor product should do so at their own expense; and (2) Passing through costs of firming capacity purchases is appropriate since Western is marketing capacity on a 90 percent probability. Further, Western has limited the amount of firming capacity it will pass through to 109 MW in the summer season and 95 MW in the winter. There is a small risk (10 percent) that Western will have insufficient capacity. In addition, there is sufficient storage capacity so that reservoirs can be drawn down for several years before deficiencies in capacity will be realized, giving customers several years' warning. Western has also limited the amount of firming capacity purchase expense which will be passed through to customers. For these reasons, it is appropriate to pass these potentially substantial costs through to the contractors.

Western also considered what would happen under above-average hydrological conditions. When such conditions prevail, Western would purchase less energy and substitute more of its own generation so that customers could possibly purchase all or part of the 400 GWh at the SLCA Integrated Projects firm rate.

Due to the results of Western's analyses regarding the potential effects of various pass-through methodologies on its customers, Western has determined that a modified pass-through methodology would be the most appropriate. This method has a much less deleterious effect in dry years than a total pass-through method, while maintaining the idea that the customer should pay for an improved product and that the customer should bear some of the risks involved regarding hydrologic conditions.

Since the September 1984 **Federal Register** notice proposed that costs associated with all purchases of capacity and energy to meet contract commitments be passed-through to customers, several commenters suggested that an energy balancing account be part of the mechanism for handling the pass-through of these costs. As described, this balancing account would act as a revenue pool created as a result of excess capacity and/or surplus energy sales in wet years, which could then be credited against the expense of firming purchases required in drier years. The account, as proposed, could further be adjusted seasonally or annually to reflect current conditions.

It is understandable that customers would be interested in such a device when all firming costs and purchased energy costs would be passed on. According to Western's analysis, total expenses to customers would increase by 24 percent in an adverse year on a total pass-through basis. An energy balancing account could mitigate potentially large increases in their power costs in dry years.

In Western's view, an energy balancing account, adjusted seasonally, would be difficult to administer. Western is interested in reducing unnecessary overhead and administrative expenses and increasing productivity. Furthermore, Western prefers to limit the amount of firm capacity and energy purchases that it will pass-through to customers. With limits on possible purchases of capacity and energy in any year as proposed, drastic swings in customer costs (and the retail rate to consumers) should not be experienced by customers in drier

years. Hence, an energy balancing account would not be necessary.

(2) *Minimum Scheduled Rate of Delivery.* Western stated in the 1984 Proposed Criteria that it would retain the latitude to change the 35 percent minimum scheduled rate of delivery if required for operational purposes. However, Western recognizes the legitimate need of its customers to plan for the future in order to better serve their customers. Therefore, Western will not change the minimum scheduled rate of delivery without advance notice or prior discussion with affected customers.

(3) *Delivery Conditions.* In the September 1984 **Federal Register** notice, Western maintained all existing delivery points except for Casper, Glenrock and Thermopolis in Wyoming, and the Yellowtail FPOD in Montana. These delivery points were proposed to be withdrawn due to changed conditions regarding the availability of Pacific Power and Light Company (PP&L) wheeling of energy in Wyoming and Montana. In addition, Western proposed to establish a new delivery point at the Elephant Butte Powerplant at 6.9 kV. Lastly, Western expressed the intent of continuing to exercise the option to extend the term of existing wheeling arrangements for deliveries to equivalent FPODs in Utah so long as the option remained in transmission agreements.

Several commenters utilizing the Wyoming and Montana FPODs expressed strong support for maintaining these delivery points, and qualified their concern by estimating the possible additional wheeling expenses that would result should these points be deleted.

Wyoming constitutes part of the Northern Division of the CRSP marketing area and was recognized as such in the original marketing criteria. CRSP did not construct Federal transmission lines into north-central Wyoming because it had made satisfactory arrangements in about 1962 for wheeling CRSP power with PP&L. As such, Western concludes it has a continuing responsibility to maintain these delivery points in Wyoming and Montana.

Since an alternative transmission path for CRSP energy to these FPODs might be through facilities of the Pick-Sloan Missouri Basin Program transmission system, Western has reassessed its earlier proposal to delete the Wyoming and Montana delivery points. Subject to suitable arrangements, Western's Loveland Area Office will begin assessment of wheeling fees for SLCA Integrated Projects power to these FPODs in the post-1989 period. Western will incorporate those costs into CRSP operating expenses.

A comment from a recipient of capacity and energy from the Rio Grande Project expressed support for recognizing the Elephant Butte 6.9 kV FPOD, which is currently used.

Western has an agreement with UP&L to wheel CRSP power to customers in Utah. As was the case in the decision to enter into an agreement with PP&L to deliver energy to CRSP Wyoming customers, Western did not build Federal transmission facilities to serve many of its Utah customers because of a satisfactory agreement with an IOU. Western believes that extensions of existing wheeling arrangements, as long as acceptable terms are available, will be used to provide delivery in Utah at equivalent FPODs.

Western has added an FPOD at the Fontenelle switchyard at 69 kV. The Fontenelle Powerplant facility is not presently operational, but Reclamation has initiated needed repairs, and the FPOD will be established to recognize that power deliveries to certain customers may be made at that point when the powerplant is placed back in service.

(4) *Annual Exchange of Capacity.* The September 1984 **Federal Register** notice allowed a one-time exchange of capacity between customers from one season to another, provided that customers were in the same division. In respose to comments received, Western is willing to be still more flexible in supplying electrical service to its customers. Some exchanges of capacity may not be permitted because of the unavailability of transmission service from third parties or for operational reasons.

Therefore, Western will allow an annual exchange of seasonal capacity and energy among customers between divisions provided that, (1) such an exchange will not adversely affect Western's operations, and (2) exchanges in capacity would not significantly decrease system diversity. To accomplish such an exchange, requests must be made 120 days in advance of the beginning of the winter season and will be considered on a case-by-case basis.

(5) *Resale Provisions.* A proposed Resale of Electric Energy article was presented in the September 1984 **Federal Register** notice which suggested that one of the ways that the requirements of the article could be satisfied, that is, the requirement that end-use consumers be able to identify the costs of federally generated power, would be for the customer to provide a breakdown of the amounts and costs of Federal power, non-Federal power and other costs which constitute the composite costs charged to the retail consumer. This breakdown was proposed to be done in monthly bills rendered to the end-use consumers.

All comments received on this proposal were in opposition to the monthly notice. Many expressed concern that a monthly notice would be unduly burdensome, and supported either an annual or semiannual notice. Several suggestions as to the form of these notices were provided, including notices such as bill stuffers, annual reports and notices in newspapers of general circulation.

Several commenters suggested that the notice be provided periodically, but not less often than semiannually. One commenter suggested that inserts or explanations in monthly bills would receive little attention from retail consumers due to their overriding concern about their own bills.

Western agrees that a monthly notice may not effectively inform retail consumers as to the cost components of the power they receive. The intent of the reporting requirement remains unchanged. Western is persuaded that semiannual notification will be most effective.

Several comments indicated uncertainty on the part of potential customers for the form and content of such notices to customers. Western will refrain from detailing such information in this publication, but will be willing to discuss detailed requirements during negotiation of electric sales agreements with each entity.

(6) *Other Contract Concerns.* The 1984 Proposed Criteria contained a provision applicable to allottee purchasing agents. One commenter suggested that the intent of this provision was unclear. Therefore, Western has revised this provision to more clearly indicate that it is Western's intent to retain diversity benefits should two or more allottees request they be represented by a joint action agency and Western assigns individual allocations to this entity.

c. Summary and Conclusions

Western is adopting a modified pass-through of purchase costs. This approach limits the annual pass through of costs to those associated with the purchase of up to 400 GWh of energy, 95 MW of winter capacity, and 109 MW of summer capacity. This will eliminate some undesirable uncertainties on the part of the customer and Western. An energy balancing account will not be adopted since these limitations have

been established. Western prefers to develop the specific implementation details of this modified pass-through of purchase cost approach during contract negotiations.

Western will retain the present 35 percent minimum schedule requirement with a provision for modification, as appropriate, should Western wish to waive the minimum requirement during peak periods when operating conditions permit. Western will provide advance notice and discuss with affected customers any contemplated change in minimum schedule requirements. Since Wyoming was identified as a market area for CRSP power in the original marketing criteria, and because reasonably priced transmission service can be obtained, Western will continue delivery of SLCA Integrated Projects resources in Wyoming at Casper, Glenrock and Thermopolis, and in Montana at Yellowtail. Western will continue to deliver power to customers in Utah under terms and conditions of its wheeling agreements with UP&L as long as those agreements are effective. Also, Western will modify the listing of designated or equivalent FPODs by adding a 6.9 kV delivery point at the Elephant Butte Powerplant in New Mexico. Western is also adding the Fontenelle FPOD in Wyoming at 69 kV.

Western desires to accommodate customers and thus assist individual customers adjusting the diversity between their summer and winter allocations to their best advantage. Therefore, Western will allow annual exchanges of capacity between customers without division restrictions, as long as Western or its agents are not adversely affected.

Western recognizes the need for retail consumers to make informed decisions regarding the growth and development of renewable resources. In addition, it is important to Western that the financial benefits of low-cost Federal hydro power be passed on to retail consumers of electricity. For these reasons, Western will revise the Resale of Electric Energy article in electric service contracts to provide for a semiannual notice requirement on the part of Western's customers. The acceptable method(s) to be used in providing such notice will be developed during negotiation of electric sales contracts.

The Allottee Purchasing Agent provision in the Criteria has been clarified to more clearly indicate Western's intent to retain diversity benefits should two or more allottees desire a joint action agency to enter into a contract with Western after individual allocations have been made.

G. Regulatory Procedure Requirements

1. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a final rule, is further required to prepare and make available for public comment a final regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the marketing plan relates to electric services provided by Western.

Under 5 U.S.C. 601(2), rules and practices relating to services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

2. Notice of Final Environmental Assessment and FONSI

Comments have been received from the National Wildlife Federation (NWF) and the Environmental Defense Fund (EDF) relative to the level of the National Environmental Policy Act of 1969 (NEPA) compliance required for the preparation of marketing and allocation criteria, among other concerns. Additional comments from NWF/EDF support their strong belief that preparation of a marketing plan constitutes a "major Federal action" and therefore, an environmental impact statement (EIS) is mandatory. Based on this belief by NWF/EDF, Western was criticized for not having begun the formal scoping process required for NEPA compliance.

Considerable discussion has been provided in the text of the Post-1989 EA which evaluated the potential environmental and socioeconomic effects of the Criteria. The analysis concentrated on the estimated potential changes in retail rates and estimated changes in consumption at the consumer level. No physical impact component was identified, as the proposed action was determined not to affect the operation of the reservoir system, and thus would not affect streamflows. Incorporated by reference, these discussions concluded that the development of the marketing and allocation criteria do little more than distribute Western's marketable resource and, from a regional perspective, result in insignificant socioeconomic impact to the quality of the human environment. No EIS is required for power marketing criteria if there is no significant regional effect. Based on the findings and conclusions of the EA, DOE determined that these criteria will have no significant environmental impact. The Post-1989 EA (DOE/EA–0265) and Finding of No Significant Impact (FONSI) were approved on January 8, 1986, in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, 40 CFR Parts 1500–1508.

Copies of the EA and FONSI may be obtained by contacting the SLCAO Area Manager whose address appears above.

3. Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

The Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power for the SLCA Integrated Projects are published herewith.

Issued at Golden, Colorado, January 23, 1986.

William H. Clagett,

Administrator.

Department of Energy, Western Area Power Administration; Post-1989 General Power Marketing and Allocation Criteria

Table of Contents

Part I. General

A. Applicability

These General Power Marketing and Allocation Criteria (Criteria) of the Western Area Power Administration's (Western) Salt Lake City Area Office (SLCAO) are established in accordance with the provisions of the Acts of Congress approved June 17, 1902 (ch. 1093, 32 Stat. 388), August 4, 1939 (43 U.S.C. 485h(c)) and August 4, 1977 (42 U.S.C. 7152, 7191). The SLCAO criteria are more specifically based upon the provisions of the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), June 18, 1954 (68 Stat. 255), April 11, 1956 (43 U.S.C. 620, *et seq.*), July 7, 1960 (22 U.S.C. 277d–13, 14, 15, 16), December 23, 1963 (77 Stat. 475), and acts amending or supplementing all of the foregoing legislation.

These Criteria shall become effective upon approval and promulgation by Western's Administrator and will apply to all power marketed by Western's SLCAO from the SLCA Integrated Projects and to the resources from the SLCA Integrated Projects marketed by Western's Boulder City Area Office (BCAO) and Loveland Area Office (LAO). Existing contract arrangements will only be affected upon amendment by the parties. These Criteria shall supersede and replace the General Power Marketing Criteria for sale of power from the Colorado River Storage Project (CRSP) effective February 9, 1978, as revised effective February 6, 1984. These Criteria are subject to change upon reasonable notice by the Administrator and the opportunity for comment by interested parties.

B. Marketable Resources

1. *SLCA Integrated Projects.* The SLCA Integrated Projects are certain hydroelectric resources operated within the Salt Lake City Area by the Bureau of Reclamation, including the CRSP and Participating Projects, and the Collbran and Rio Grande Projects. Marketable firm resources as of October 1989 are listed below:

Marketable firm energy (GWh)	Winter	Summer
CRSP	2787.812	2857.647
Collbran	21.137	33.336
Rio Grande	12.218	44.587
Purchases	356.240	43.760
SLCA integrated projects	3177.407	2979.330

Marketable firm capacity (MW)	Winter	Summer
CRSP	1410.838	1313.078
Collbran	13.079	13.079
Rio Grande	25.223	25.223
SLCA integrated projects	1449.140	1351.380

2. *Falcon-Amistad and Provo River Projects.* a. The Falcon-Amistad Projects are those hydroelectric resources operated within the SLCA by the International Boundary and Water Commission. These marketable resources have been committed under the terms and conditions of Contract No. 7–07–50–P0890 dated August 9, 1977, with South Texas and Medina Electric Cooperatives until June 8, 2033. Said contract, or any revision thereto, embodies the marketing criteria for these projects.

b. The Provo River Project hydroelectric resource operated within the SLCA by the Bureau of Reclamation may become part of the SLCA Integrated Projects upon the development of appropriate arrangements among affected parties. Any future integration of the Provo River Project may be administratively accomplished without additional public participation.

3. *Future Resources.* New or revised marketing criteria will be developed as necessary when future power resources are available and offered for sale.

Part II. Marketing Criteria For SLCA Integrated Projects

A. Market Area

The market area within which the power from the SLCA Integrated Projects will be marketed is divided into Northern and Southern Divisions.

Northern Division

1. The Northern Division consists of the States of Colorado; New Mexico; Utah; Wyoming; the city of Page, Arizona; a portion of the area in Arizona served by the Navajo Tribal Utility Authority; the areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative; and White Pine County and portions of Elko and Eureka Counties in Nevada.

Southern Division

2. The Southern Division consists of the remaining portion of the State of Arizona, and that part of the State of Nevada in Clark, Lincoln, and Nye Counties which comprises the southern portion of the State.

New customers must have loads located within the portion of the market area that is also within the SLCA of the Northern Division, which includes the States of New Mexico and Utah; that portion of Colorado west of the Continental Divide, the southwest area of Wyoming within the Colorado River Basin; White Pine County and portions of Elko and Eureka Counties in Nevada served by Mt. Wheeler Power; and areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative.

B. Service Seasons

1. *Summer Season.* The 6-month period from the first day of the April billing period of any calendar year through the last day of the September billing period of the same calendar year.

2. *Winter Season.* The 6-month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

C. Classes of Service

Classes of service available for marketing shall be as follows:

1. *Long-Term Firm Energy With Capacity.* Long-term firm energy and associated capacity available therewith through September 1999, shall be as stated in Appendix A.

2. *Short-Term Firm Energy and/or Capacity.* To the extent that priority uses, as estimated in Appendix A, have not developed and/or annual streamflow conditions and reservoir operations result in the production of greater amounts of power than what is committed on a long-term basis, short-term firm energy or capacity may be offered for sale on a monthly or seasonal basis. Such offers will be for firm energy with or without capacity, capacity with the return of energy or capacity without energy. These resources may be used in a resource coordinatin program.

3. *Other Services.* In addition to marketing the above classes of service, Western will engage in other transactions such as delivering or receiving interchange, emergency assistance, maintenance services and/or regulation services to the extent that water and power resources permit and the contracts contain enabling

provisions. In order to conserve fossil fuels, enhance the environment, and/or ensure the availability to preference customers of contracted amounts of capacity and energy, Western will purchase or exchange capacity and/or energy as necessary or desirable to supplement its resources. Nonfirm energy service may be available as a result of purchases, exchanges, or favorable water conditions. To the extent that transmission capacity is determined to be available, Western will provide firm and nonfirm transmission service.

D. Derivation of Marketable Resources

Energy available for load will exceed average generation based on hydrological conditions projected for the 10-year period ending September 1999 by about 400 GWh annually. Capacity available from SLCA resources will be based on the maximum operating capacity of the powerplants of the Collbran and Rio Grande Projects along with the capacity from the CRSP powerplants based on 90 percent availability during the period from 1989 to 1999. Energy and capacity will be reserved for certain Bureau of Reclamation priority uses. All resources will be marketed in accordance with applicable Federal laws and policies. The derivation of the marketable resources of the SLCA Integrated Projects and the availability of these resources by seasons is contained in Appendix A.

E. Allocation Priorities

Available resources will be allocated in accordance with the allocation criteria stated in this document (Appendix B) and the preference provisions of Federal law in the following order of priority:

1. Preference entities within the SLCA Integrated Projects market area.
2. Preference entities outside the SLCA Integrated Projects market area.
3. Nonpreference entities acting as agents for public entities without distribution systems.
4. Nonpreference entities acting on their own behalf.

These priorities may be recognized within pricing blocks for nonfirm energy.

Part III. Contract Arrangements

Those entities receiving an allocation and taking any other required steps will be offered a contract for the allocated resources based on the criteria stated in this document after reasonable opportunity to discuss proposed contract language has been provided to allottees. Allottees will have six (6) months to accept the offered contract or until September 30, 1987, whichever is later.

A. General Contract Terms

1. *Term of Contract.* Existing contracts will be allowed to expire by their own terms. Contracts offered for the sale of newly allocated long-term firm energy with capacity will become effective on the first day of the October 1989 billing period (or upon expiration of an existing contract if later) as to the delivery of energy and capacity and will terminate on the last day of the September 2004 billing period. However, at the end of the summer 1999 billing period, the amounts of committed energy and capacity for the remainder of the contract period will be subject to revision based upon the marketable resources upon 3 years' advance notice.

2. *Power Receipt and Distribution.* Contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing.

3. *Conservation and Renewable Energy Program.* Contractors will implement the terms of the Conservation and Renewable Energy (C&RE) article, or any that may supersede it, within 1 year of the date of contract execution. The development of a C&RE program is a responsibility of each Western long-term firm power contractor and its member systems, if any, benefiting from the purchase of federally generated long-term firm power.

An "Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" was published in the **Federal Register** (50 FR 33892) on August 21, 1985. In order to achieve the purposes listed therein, Western will guide and assist its firm power contractors in their C&RE program development, as requested and to the extent possible. Failure to develop a C&RE program that meets the Western Acceptance Criteria may subject a contractor to the potential loss of 10 percent of its firm power (capacity and energy) allocation. Western has also created a C&RE pool of energy with capacity that may be awarded to contractors with outstanding C&RE programs.

4. *Allottee Purchasing Agents.* Western may contract with a single purchasing agent for two or more allottees under this Criteria upon request of the allottees. Western, however, will not be willing to eliminate load diversity that permits it to meet its operating obligations.

5. *Load Diversity Adjustment.* Contract provisions will permit Western to adjust contract rates of delivery downward on a proportional basis in the event load diversity does not cover transmission system losses or other operating requirements.

6. *Resale Provisions.* Existing contractors will implement the terms of the Resale of Electric Energy article upon contract execution. New contractors will implement them upon receipt of Federal power. Failure to comply with these provisions may result in the loss of all or a part of the resources committed to the contractor. The Resale of Electric Energy article will contain, among other things, a requirement that the contractor demonstrate that:

a. The benefits of Federal power are distributed to the contractor's customers at the lowest possible rates consistent with sound business principles; and

b. Consumers can identify the costs of federally generated power and non-Federal power.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements, in addition to the contractor. One of the ways these requirements may be satisfied by the contractor and its members or principals is to provide cost information semiannually to their customers, including a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customer.

7. *Annual Exchange of Energy and Capacity.* To assist individual contractors to best utilize available resources, Western is willing to consider the annual exchange of energy and capacity from one season for the other season by matching those individual customers who desire to exchange with other customers 120 days prior to the beginning of each winter season, as long as such exchanges of energy and capacity do not adversely affect Western's operations.

B. Long-Term Firm Energy With Capacity Obligations

1. Monthly long-term firm energy and capacity delivery obligations for each season will be set forth in each contractor's power sales contract. These amounts will be determined in accordance with the estimated monthly pattern of the contractor's load requirements. Western's firm power

obligation for any given hour will be limited to the actual power scheduled during that hour; i.e., contractors will not be entitled to claim unscheduled firm capacity as their operating reserve capacity.

2. The monthly energy obligations may be increased from time-to-time at Western's discretion, should short-term conditions allow. If the established limit is increased for any month, it will be subsequently decreased to the normal monthly energy delivery obligations set forth in the power sales contract, unless Western agrees otherwise in writing.

C. Scheduling, Accounting and Billing

Western and its contractors will establish mutually agreeable scheduling and accounting procedures, based upon accepted utility industry practices, which will provide efficient and practicable utilization of energy and capacity. These procedures will be set forth in Western contracts or in separate written agreements made a part thereof. To the extent that firm energy or capacity is not available from the resources of the SLCA Integrated Projects for any season, up to the amount of Western's contractual obligation to provide energy or capacity, Western will purchase firming energy and/or capacity, unless a contractor advises Western not to purchase such energy and/or capacity on its behalf. Costs associated with the annual purchases of up to 400 GWh of energy and 109 MW of winter capacity or 95 MW of summer capacity will be on a pass-through-cost basis under the conditions specified in item 2.c. below. The costs of all other firming purchases will be recovered in the applicable firm power rates.

1. *Scheduling.* a. The maximum scheduled rate of delivery for long-term firm power (energy and capacity) in each billing period will be the monthly power obligations based on the contractor's seasonal load pattern of the contractor's loads being served with resources from the SLCA Integrated Projects.

b. The minimum scheduled rate of delivery for long-term firm power in each billing period will be 35 percent of the customer's maximum seasonal firm power rate of delivery during all hours of the month. This minimum schedule will normally be required to meet downstream water release requirements, to purchase firming energy, and to make purchases for a fuel replacement or other resource coordination program at a level that will allow utilization of operating reserves. The required minimum scheduled rates of delivery may be changed by Western as necessary for the above purposes upon reasonable notice of its needs to do so and an opportunity to comment by contractors.

c. If operating conditions warrant and Western so requests, each customer will schedule its resources from the SLCS Integrated Project to approximate normal hourly and daily load patterns to avoid abrupt changes in water releases and generation levels or other undesirable results. Upon request by the contractor, the requirement for a minimum schedule during onpeak periods may be waived by Western if operating conditions permit.

2. *Accounting and Billing.* a. The amounts of energy and/or capacity to be paid for by the contractor will be determined in accordance with accounting procedures set forth in the contracts, or in separate written agreements made a part thereof and need not be the monthly power and energy obligations. Said accounting procedures will include determining the amounts of energy and capacity delivered to the contractor at each point of delivery or point of use and shall establish the amounts of Federal power delivered over Western's transmission system to each contractor at each point of delivery.

b. These procedures will also provide for billing at multiple points of delivery. If the contractor's distribution system is operated so as to permit power to flow between points of delivery, accounting and billing will be on a coincidental basis. Otherwise, accounting and billing at multiple points of delivery will be on a noncoincidental basis, either by utilizing noncoincidental scheduling or metering information, or by reducing the contractor's entitlement to coincidental deliveries by the estimated diversity among the delivery points.

c. The cost of firming energy and capacity purchased in order to meet the contractual obligation to deliver the SLCA Integrated Project's energy and capacity to contractors in each fiscal year shall be the average cost of such energy and capacity purchased in the SLCA during the fiscal year. These costs shall be accrued during the fiscal year in which they are incurred. Purchase costs associated with annual energy purchases up to 400 GWh (the amount that commitments exceed average energy) and with capacity purchases up to 109 MW in the winter season and 95 MW in the summer season when the need for purchased capacity is due to hydrological conditions (the amount that commitments exceed adverse year capacity up to the 90 percent probability level) will be a cost obligation of those contractors who desire that the pruchases be made on their behalf. To the extent the purchase cost obligations of the contractors were not anticipated and collected during the same fiscal year with a direct billing, they will be billed to the contractors during the following fiscal year or portion thereof, as Western deems appropriate, along with the regular monthly power bill. If the necessary revolving funds, authorizations, or appropriations are not available to Western, then trust funds will be established prior to Western's expenditures for purchasing the firming energy and capacity that is a cost obligation of the contractors.

D. Delivery Conditions

1. *Location and Voltage.* Subject to Western's approval as to specific location and voltage, normal delivery will be made at Western's transmission system voltages or at the contractor's transmission voltage at established delivery locations.

Deliveries may continue to be made at subtransmission voltages at powerplant and substation locations where contractors already are receiving deliveries at such lower voltage levels.

Designated or Equivalent Federal points of delivery will be at:

a. Points on the SLCA Integrated Projects' transmission system; or

b. Points on other Western transmission systems or the systems of non-Federal entities which have been established as delivery points under arrangements between Western and other entities.

If such arrangements are terminated, then the delivery points under 1.b. above will be rescinded. These points are listed below and may be modified as provided herein.

DESIGNATED OR EQUIVALENT FEDERAL POINTS OF DELIVERY, TAP POINTS, AND VOLTAGES

	Kilovolt
Arizona	
Glen Canyon	69.
Kayenta	230.
Long House Valley	230.
Mesa [1] [2]	230.
Pinnacle Peak [1]	230.
Colorado	
Ault	230.
Beaver Creek [2]	115.
Collbran Switchyard	115.
North Main Tap (Gunnison)	115.
Gore Pass Tap	138.
Green Mountain	115.
Gunnison	115.
Hayden	138.
Lost Canyon	115, 230 or [345].[3]
Midway	115. 230.
Montrose	115.
Pueblo [2]	115.
Rangely	138.
Salida (Poncha Junction)	115.
Skito Tap	115.

DESIGNATED OR EQUIVALENT FEDERAL POINTS OF DELIVERY, TAP POINTS, AND VOLTAGES—Continued

	Kilovolt
Story [2]	230.
Weld	115, 230.
New Mexico	
Albuquerque [2]	115.
Ambrosia Lake [2]	115.
Elephant Butte	6.9, 115.
Four Corners	230 or [345].[3]
Shiprock	115, 230, [345].[4]
Utah	
Brigham City Tap [2]	138.
Bountiful Tap [2]	138.
Centerfield [2]	138.
Fillmore [2]	138.
Flaming Gorge	69, 24.9.
Hale Plant Tap [2]	138.
Hyrum [2]	138.
Murray Tap [2]	138.
New Castle Tap [2]	138.
Paragonah [2]	138.
Sigurd [2]	138.
Smithfield Tap [2]	138.
South Provo Tap [2]	138.
Springville [2]	138.
St. George [2]	138.
Vernal	138.
Upalco Tap [2]	138.
Henrieville Tap [2]	230.
Wyoming	
Archer	115, 230.
Casper [2]	115.
Glenrock [2]	230, 115.
Thermopolis [2]	115.
Fontenelle	69.
Montana	
Yellowtail [2]	230.

[1] Deliveries to Southern Division Nevada customers are made from Mesa or Pinnacle Peak.
[2] Points of delivery on another Federal system or the system of a non-Federal entity.
[3] Scheduled for uprating from 230 kV to 345 kV.
[4] A 345-kV yard is under construction.

2. *Modification to Facilities.* Modifications to existing facilities and alternate or additional delivery points (beyond points provided by Western for the delivery of Western's firm commitments) requested by the customers may be permitted at the discretion of Western; costs for such modifications will be assigned to the appropriate parties. Western has no obligation to furnish additional facilities or to increase the transmission or transformer capabilities of its power system. Delivery will not be made from transformer capacity required for project purposes. Requests for taps on Western's transmission system will be considered on a case-by-case basis, with the final determination made by Western.

E. Delivery of Power Beyond Delivery Points

1. All costs, including losses, for delivery of power (energy and capacity) beyond the established delivery locations shall be the responsibility of the contractor.

2. The following alternatives are available to contractors for accomplishing delivery of power beyond the established delivery locations:

a. The contractor(s) may build all facilities to accept delivery at the estabished voltage at identified delivery locations, in which case the contractor(s) will pay the applicable rates for such power. The basic design of such facilities is subject to Western's approval.

b. Arrangements may be made with a third party to wheel and deliver power to a contractor's point of use. Such arrangements will normally be made by the contractor(s), with Western's assistance if desired. When the contractor(s) makes its own wheeling arrangements, the contractor(s) will be billed by the wheeling agent(s) and will pay the wheeling charges directly to the wheeling agent(s). If Western contracts for the wheeling arrangements on behalf of the contractor(s), Western will pass the costs through to the contractor(s).

c. Western may construct the transmission line facilities required beyond the identified established delivery locations, if the cost of the facilities constructed by Western beyond such locations are paid by the beneficiaries thereof.

Appendix A—Derivation of Marketable Resources

SLCA Integrated Projects

Energy—GWH	Winter	Summer
Average Generation of Plant:		
—CRSP [1]	3058.000	3424.000
—Collbran	22.800	35.700
—Rio Grande	13.180	47.750
Total average generation	3093.980	3507.450
Purchase [2]	356.240	43.760
Total	3450.220	3551.210
Less:		
Losses (7% at load) [3]	225.713	232.320
Priority Use [4]	47.100	339.560
Marketable firm energy	3177.407	2979.330

[1] Based on BuRec CRSS model studies simulating future conditions, July 1984.
[2] Purchases were scheduled to provide the same load factor (50.197 percent) for the marketable firm capacity and energy in each season. However, since the Southern Division resource is comprised of CRSP only, whereas the Northern Division resource includes energy from the Collbran, and Rio Grande Projects, the load factor varies slightly between the two divisions.
[3] Equivalent to 6.542 percent losses applied to amounts generated.
[4] Based on BuRec estimates of priority use requirements, August 25, 1983.

Derivation of Marketable Resources

SLCA Integrated Projects

Capacity—MW	Winter	Summer
Capacity at Plant:		
—CRSP[1]	1691.000	1691.000
—Collbran	14.000	14.000
—Rio Grande	27.000	27.000
Total	1732.000	1732.000
Less:		
Unavailable capacity[2]	130.000	91.000
Reserves[3]	114.000	114.000
Priority Use[4]	38.860	175.620
Marketable firm capacity	1449.140	1351.380

[1] Based on the Bureau of Reclamation's (BuRec) CRSS model studies simulating future conditions, July 1984. Includes estimated generator uprates at Glen Canyon scheduled for completion in 1987.
[2] Based on 90 percent probability for CRSP and limiting releases at Glen Canyon to 31,500 cubic feet per second.
[3] Based on estimates of reserves assuming only Western membership in Inland Power Pool.
[4] Based on BuRec estimates of priority use requirements, August 25, 1983.

Appendix B—Allocation Criteria for the SLCA Integrated Projects

1. Bases for Allocations. The total amounts of long-term energy and capacity available for allocation to the Northern and Southern Divisions of the SLCA Integrated Projects market area are tabulated below and compared to existing commitments:

	Winter			Summer		
	Available for allocation	Existing commitment	Change	Available for allocation	Existing commitment	Change
Marketable Firm Energy (GWH)	3177.407	2659.900	517.507	2979.330	3041.800	−62.470
Southern Division:						
Existing Customers	264.842	214.200	50.642	463.854	612.000	−148.146
Northern Division:						
Existing Customers	2628.705	2445.700	183.005	2227.720	2429.800	−202.080
Participating Customers	218.967	0.000	218.967	220.389	0.000	220.389
Subtotal	2847.672	2445.700	401.972	2448.109	2429.800	18.309
C&RE Incentive Program	64.893	0.000	64.893	67.366	0.000	67.366
Detail—Northern Division:[1]						
CRSP	2811.009	2428.200	382.809	2371.260	2336.300	34.960
Collbran	23.233	17.500	5.733	32.876	32.300	0.576

	Winter			Summer		
	Available for allocation	Existing commitment	Change	Available for allocation	Existing commitment	Change
Rio Grande	13.430	0.000	13.430	43.973	61.200	17.227
Subtotal	2847.672	2445.700	401.972	2448.109	2429.800	18.309
Marketable Firm Capacity (MW)	1449.140	1293.204	155.936	1351.380	1275.613	75.767
Southern Division:						
Existing Customers	119.000	92.700	26.300	210.000	264.800	54.800
Northern Division:						
Existing Customers	1200.504	1200.504	0.000	1010.813	1010.813	0.000
Participating Customers	100.000	0.000	100.000	100.000	0.000	100.000
Subtotal	1300.504	1200.504	100.000	1110.813	1010.813	100.000
C&RE Incentive Program	29.636	.000	29.636	30.567	.000	30.567
Detail—Northern Division:[2]						
CRSP	1263.056	1186.504	76.552	1073.538	972.813	100.725
Collbran	12.787	14.000	−1.213	12.728	14.000	−1.272
Rio Grande	24.661	0.000	24.661	24.547	24.000	0.547
Subtotal	1300.504	1200.504	100.000	1110.813	1010.813	100.00

[1] Includes individual project share of purchases, losses, and priority use.
[2] Includes individual project share of unavailable power, reserves, and priority use.

For convenience in referring to the allocation process, the marketable firm energy and capacity has been divided among the following resource pool designations. The relationship between the energy and capacity components in each resource pool, that is, load factor (LF) and seasonal energy factor (SEF), is also shown for comparison with customer's seasonal load factors:

DEFINITION OF RESOURCE POOLS

Summer		Winter			Pool (No)	LF (percent)	SEF (kWh/kW)
Division	Customer group	Pool (No)	LF (percent)	SEF (kWh/kW)			
Southern [1]	Existing	1	50.9	2,225	2	50.3	2,208
Northern	Existing	3	50.1	2,189	4	50.2	2,203
	Participating	5	50.1	2,189	6	50.2	2,203
C&RE incentive		7	50.1	2,189	8	50.2	2,203

[1] Load Factor for Southern Division winter season pools differs slightly from summer season due to the difference in CRSP load factor between seasons.

The percentage change in the proposed amount of seasonal energy for the existing customer group in each division is as follows:

	Winter (percent)	Summer (percent)
Southern Division	+23.6	−24.2
Northern Division	+7.3	−8.4

To promote more widespread and equitable distribution of the benefits of available Federal energy and capacity, energy in excess of amounts presently under contract, and associated capacity, will be reserved for participating customers in the SLCA (Resource Pools 5 and 6).

Other Federal resources have been or will be available from the BCAO and LAO to new customers in those areas.

Since CRSP energy and capacity available to the Southern Division in the post-1989 period is less than presently under contract for the summer season, Resource Pools 1 and 2 will be offered to Southern Division existing customers only. The CRSP resource only will be allocated in the Southern Division in amounts that represent approximately 18 percent of the initial CRSP resource (1200 MW) in the summer season and about 10 percent of 1200 MW in the winter season. The balance of the long-term firm resources from the SLCA Integrated Projects will be allocated to the Northern Division.

Resource Pools 1 and 2 will be allocated to existing customers in the Southern Division by adjusting existing commitments based partly on the proportion of a customer's existing summer season CRSP contract rate of delivery (excluding peaking) and partly on the proportion of each customer's existing "Other Federal" summer season entitlements. "Other Federal" resources include Parker-Davis and Boulder Canyon Project resources, excluding Boulder Canyon uprates.

SOUTHERN DIVISION ALLOCATION EQUATION

$$\text{Individual Adjustment (SD, Existing)} = \left[0.50\ \frac{(\text{CRSP i})}{(\text{CRSP-t})} + 0.50\ \frac{(\text{OF i [w/o BCP]})}{(\text{OF t [w/o BCP]})}\right] \times \text{Total Adjustment}$$

Where:

CRSP = Individual (i) or Total (t) CRSP Summer Firm CROD

OF [w/o BCP] = Individual (i) or Total (t) Summer Other Federal Resources, excluding Boulder Canyon uprates

Total Adjustment = Increase or decrease from existing seasonal commitment

Available energy in Resource Pools 3 and 4 will be allocated to eligible existing customers in the Northern Division for each season based partly on the ratio of a customer's existing firm capacity to total existing firm capacity commitments for the customer group to which it pertains, and partly on the ratio

of a customer's existing total commitment (firm + peaking capacity) to the existing total commitment for the entire corresponding customer group.

NORTHERN DIVISION ALLOCATION EQUATION

$$\text{Allocation, Resource Pool} = \frac{[\text{CRSP, F(i)}]}{[\text{CRSP, F(t)}]} \times \text{RES. POOL "FIRM" (t)} + \frac{[\text{CRSP, F+P(i)}]}{[\text{CRSP, F+P (t)}]} \times \text{RES. POOL "PEAK" (t)}$$

CRSP, F = Represents Existing Individual (i) or Total (t) Firm Capacity Entitlement.

CRSP, (F+P) = Represents Existing Individual (i) or Total (t) Firm + Peaking Capacity Entitlement.

RESOURCE POOL, "FIRM" = Represents Amount in Resource Pool "Associated" with Firm Energy.

RESOURCE POOL, "PEAK" = Represents Amount in Resource Pool "Associated" with Peaking Energy.

The energy available in Resource Pools 5 and 6, after any special allocations have been made, will be allocated based on the proportion that the participating customer's average seasonal peak load within the SLCA for the 3-year period (1980–1982) bears to the total of all participating customer's average seasonal peak load for the same period, except that a seasonal energy allocation may not exceed an amount of energy associated with 3500 kilowatts at the seasonal load factor of the available resources or an amount equal to the difference between 25 percent of their average energy requirements during 1980–82 and their total available long-term Federal resources for the period, whichever is less.

Energy and capacity has been reserved for use as an incentive to promote outstanding customer conservation and renewable energy programs. This energy and capacity may be marketed on another basis until used in this incentive program. Details of the development of program evaluation criteria and allocation methodologies will be determined through a future public participation process.

Eligible applicants for all resource pools may request capacity with allocated energy to reflect their individual system characteristics. If there is insufficient power to satisfy the requests, the Administrator may limit the capacity allocated to a load factor that is equal to the seasonal load factor of the resource pool. The Administrator may deviate from the application of these allocation criteria when special circumstances warrant it.

2. *Limit on Energy Allocation.* To promote more widespread and equitable distribution of the benefits of available energy, no applicant will receive a seasonal allocation of SLCA energy from Western such that, when combined with its total post-1989 Federal firm energy entitlements from other Federal sources, the allocation exceeds its average seasonal total energy use for 1980, 1981, and 1982. The average seasonal total energy use for 1980, 1981 and 1982 will be adjusted to include additional energy which the applicant can demonstrate was not used during that period as a result of its conservation efforts.

3. *Reallocations.* Long-term firm energy with associated capacity made available for marketing because an allottee has failed to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated without further public process. Enterprise and Hurricane, Utah, will together be given the first right to reallocable energy and capacity, so that each receives its proportional share, up to an amount equal to one-half of its peak loads in the 1975 summer season and the 1975–76 winter season.

4. *Applicant Qualifications.* The following requirements must be met in order to be eligible for an allocation of long-term firm resources:

a. Applicant profile data must have been submitted to Western on or before December 30, 1983, for each potential applicant.

b. Each potential new contractor must have had a 1982 load greater than 100 kilowatts.

c. On or before January 1, 1984, or such later date as specifically established by Western, each potential applicant must:

(1) Be a utility, primarily engaged in retail or wholesale sales of electricity, with responsibility for the load to be served; or

(2) Be a Federal or State agency with an ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(3) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(4) Have taken significant and tangible steps to acquire the means to distribute power within the time limits prescribed. Significant and tangible steps toward becoming a utility would include the following:

(a) Evidence of a financial commitment to purchase or construct a transmission system to distribute power;

(b) Evidence of negotiations with a utility regarding distribution system acquisition;

(c) Action before a public service or public utility commission to acquire a distribution system;

(d) Initiation of condemnation proceedings; and/or

(e) Construction of a distribution system.

5. *Application Procedures.* Western hereby requests all qualified applicants to advise the Area Manager, Salt Lake City Area, in writing of their requests to receive allocations of energy under these criteria and to specify the number of kilowatthours per kilowatt per season they desire for each season. This information must be received from each potential allottee in Western's Salt Lake City Area Office at 438 East Second South, P.O. Box 11606, Salt Lake City, Utah 84147 by close of business on April 8, 1986. The Administrator will allocate the available resources under the terms of these criteria only to those applicants who are qualified and who provide the requested information by the specified deadline.

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Federal Register

Friday
February 7, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-3 and 85-AWA-10]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at the 12 airports listed below. Final action is not taken on the proposed ARSA for Dulles International Airport. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). On November 1, 1985, the FAA designated 11 ARSA's as the initial phase of implementation of the NAR recommendation (50 FR 45718), and an additional 11 ARSA's were designated on December 9 (50 FR 50254).

On August 2, 1985, the FAA proposed to designate ARSA's at 11 airports under Docket No. 85-AWA-3 (50 FR 31472), and two airports addressed in this rule were proposed under Docket No. 85-AWA-10 on September 30 (50 FR 39822). This rule designates ARSA's at 12 of those airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here, the FAA published proposed ARSA designations for 28 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others requested individual notification of the informal airspace meetings held for some of the candidate airports, and that following that notice a second meeting be held. The schedule of the meetings was published in the Notice of Proposed Rulemaking (August 2, 1985, 50 FR 31472 and September 30, 1985, 50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 121-day comment period was provided for Docket No. 85-AWA-3 and a 94-day comment period provided for Docket No. 85-AWA-10 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

Additionally, AOPA submitted comments faulting notification for an earlier informal airspace meeting. AOPA discounted notices that contained an error in the graphic included in the meeting notice and those that referenced an incorrect meeting location. The FAA recognizes that there was an error in the graphic. However, the purpose of the notice, namely, to advise interested parties of the meeting, was not compromised by this inadvertent error in the graphic which was immediately corrected. Furthermore, the error in the meeting location was only in the name of the location; the address was correct. After notice had been given the chain owning the motel where the meeting was held sold it and a name change followed too late for the agency to amend the notice. The sale received considerable local media coverage, and the FAA has received no indication that the name change had a negative impact on attendance.

Several commenters faulted the manner in which comments were summarized in the informal airspace meetings, and requested that additional meetings be held and a court reporter employed to make a verbatim transcript. The FAA does not agree with this recommendation. These proposals fall under informal rulemaking and, therefore, neither the Administrative Procedures Act nor agency regulations require formal hearings. The agency exceeded basic requirements in holding informal meetings, and the summarization of comments made at those meetings and placing them in the public docket is in full compliance with procedural requirements. The docket is open to the public, and anyone may review that summary to determine if their position has been adequately summarized. Provision is also made for written comments to the docket, and thus, parties may reiterate their comments in writing, correct any error

they perceive in the agency's summary, or expand upon the summarization. Additionally, the FAA believes the informal nature of these meetings proved to be most beneficial to the agency in reaching its decisions.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

AOPA also commented that additional costs will be incurred for controller training. Although the ARSA program utilizes a new combination of ATC procedures, none of the procedures are new to air traffic controllers. Thus, the training of air traffic controllers will be accomplished during regularly scheduled briefing sessions and at no additional cost.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In some instances, commenters simply misread the delay estimate tables in the notices. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case in the three locations where ARSA has been in effect for an appreciable period.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

AOPA, Experimental Aircraft Association (EAA), and other commenters claimed the FAA had failed to properly account for the number of pilots that would need to purchase two-way radios. These comments referred to the number of NORDO aircraft that were located at airports in proximity to ARSA candidates and noted that discrepancy between the number of such aircraft and the number reflected in the Regulatory Evaluation.
Because of the liberal use of cutouts and local agreements, FAA estimates that only about six NORDO aircraft will be required to install radio transceivers as a result of establishing ARSA's at the sites included in this final rule.

AOPA also claimed that at least half of the number of NORDO aircraft in the Untied States, or 20,900 aircraft according to AOPA estimates, would have to purchase two-way radios in order to enter, land, and depart from ARSA airports. That is well in excess of the number estimated by the FAA. The FAA does not agree with the AOPA conclusion because each airport receiving an ARSA designation has an airport traffic area requiring two-way radio communications at present, and thus, no additional cost will be incurred for the procurement of radios for aircraft landing or departing airports receiving ARSA designation.

Further, some commenters expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

The Soaring Society of America (SSA) claimed that some FAA field personnel

had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is significantly reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the three current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Compression was not detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved.

AOPA and others commented that several of the proposals will require pilots to violate Federal Aviation Regulations (FAR) section 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, EAA, and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making a recommendation to the FAA to adopt the ARSA concept. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within the criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters, including AOPA and EAA, indicated that the top of an ARSA should be limited to the height of the airport traffic area, which is generally up to but not including 3,000 feet above ground level. That limit was specifically considered by the NAR Task Group but rejected in favor of the current top of 4,000 feet above field elevation. The rationale of the task group was that the 4,000-foot cap would afford protection to aircraft executing an instrument approach during a critical

phase of flight when pilots must devote considerable attention to their instruments prior to executing an approach. The FAA concurs in that rationale and has adopted the 4,000-foot recommendation.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters indicated that pilots of aircraft equipped with altitude encoding Mode C transponders should not be required to participate in the ARSA. Procedures require that before an air traffic controller may use the altitude information from a Mode C transponder the information must be verified. Thus, the requirement to establish two-way radio communication would remain. If pilots of Mode C equipped aircraft were not subject to the remaining provisions of ARSA, there could be inequitable handling of users, one of the major points of criticism the NAR Task Group leveled at the TRSA program. Therefore, the FAA does not agree with this recommendation.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

AOPA, EAA, and other commenters requested that no 5- to 10-mile circles be segmented and that a single altitude be established at the highest level of any segment proposed. The FAA has established several ARSA's that have varying base altitudes. The FAA acknowledged that segmentation was a deviation from the NAR recommendation when the ARSA final rule was adopted (50 FR 9252, March 6, 1985). The recommendation was for the base altitude in the subject area to be 1,200 feet above ground level (AGL) and would have resulted in base altitudes rising and falling in concert with the underlying terrain. The FAA believes that segmentation simplifies ARSA's for the several locations where it is employed, yet establishes regulatory airspace where needed.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

A closely associated comment received from several parties was that mandatory two-way communications with the ARSA approach control facility would preclude a pilot from being on a proper unicom frequency in a timely manner. As was indicated in the ARSA rule (50 FR 9252, March 6, 1985), pilots can expect communications transfer in sufficient time to obtain information at secondary airports.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made significant modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA and others commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** Notice of proposed rulemaking (50 FR 31472, 31474, August 2, 1985 and 50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Some commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant

economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, argicultural operations and other small aviation businesses located at satellite airports located within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

The Air Line Pilots Association concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received supportive of each of the ARSA's addressed here as an improvement in aviation safety.

Comments on Particular Locations

[Airspace Docket No. 85–AWA–3]

Daytona Beach Regional Airport, FL

AOPA, EAA, and several other commenters objected to the establishment of an ARSA for Daytona but requested that if one were to be designated that the floor of the 5- to 10-mile shelf be raised to accommodate the recreational activity in the Spruce Creek Fly-In Community, Ormond Beach Airport, and New Smyrna Beach Airport areas. Commenters also requested the shelf be raised to enhance noise abatement procedures. The FAA indicated in the proposal and adoption of the ARSA final rule (50 FR 9252, March 6, 1985) that local agreements could be established to accommodate the needs of recreational flying activity. The shelf altitude of 1,200 feet mean sea level (MSL) is adequate to meet the needs of the noise abatement procedures requiring flight no lower than 1,000 feet MSL.

Skywood Aerial Advertising, AOPA, and others claimed that ARSA designation would have an adverse effect on banner towing operators. The FAA does not agree with this claim. Current banner towing occurs within the airport traffic area (ATA) and a letter of agreement is needed for this operation. Such a letter can encompass the subject of towing within an ARSA as well as within the ATA.

AOPA, EAA, and several other commenters claimed that ARSA designation would adversely affect flight training activity in the Daytona Beach area. Training activity is also subject to a letter of agreement and no adverse effect is expected.

One commenter claimed that simulation of the ARSA concept should preceed any actual implementation. The FAA does not agree. Regardless of the level of simulation, such an evaluation would of necessity need to be further evaluated in actual field facilities prior to making proposals on a national basis. The ARSA concept has received that level of evaluation at two field facilities prior to its adoption and further recommendation by the agency.

One commenter claimed that if all the recreational and training activity was to be subject to letters of agreement that there was no need for an ARSA. The FAA does not agree. Reducing the recreational and training activities and areas to a letter of agreement provides for those activities and simultaneously provides air traffic controllers with the needed informaton to relay to other pilots that would not otherwise be aware of the high level of air traffic activity in these areas.

Des Moines Municipal Airport, IA

Numerous commenters objected to designation of the Des Moines ARSA. Their objections were based upon claims of the compression of air traffic and the lack of a need for the proposed ARSA. These comments have been addressed above.

El Paso International Airport, TX

The City of El Paso, the El Paso Association of Certified Flight Instructors, the Air Transport Association, and several other commenters supported the ARSA proposal provided some additional provision was made for the users of the West Texas Airport. The Soaring Society of America, the El Paso Soaring Society, and other commenters objected to the proposed ARSA, but requested additional provision be made for users of the West Texas Airport if designation was to occur. The FAA concurs with the need for the additional provision and a cutout for the West Texas Airport has been provided.

The Short Wing Piper Club objected to ARSA designation at El Paso, claiming that safety benefits would not be realized due to the poor quality of radar targets displayed when fabric covered aircraft were involved, and in other cases due to the speed of certain aircraft. The FAA admits that quality of radar targets in some cases is less than desired. However, the agency does not agree that the improvement in safety that can be realized should be negated simply because its benefits do not extend equally to all users. Additionally, the information that is gained and exchanged improves the level of safety currently provided.

Some commenters claimed that a nonregulatory corridor was needed along the Rio Grande River. The FAA does not agree with this claim. The ARSA extends the two-way communications requirement of the

current airport traffic area very little and the establishment of such a corridor would have a negative impact upon ARSA services provided to pilots arriving and departing El Paso International.

Eppley Airfield, Omaha, NE, and Offutt AFB, NE

SSA, AOPA, and other commenters claimed that Offutt AFB did not meet the criteria for ARSA designation. Offutt AFB meets the criteria as recommended by the NAR and adopted by the agency.

SSA requested that the Offutt AFB ARSA only be active when air traffic was in the area. The FAA does not agree. The recommended and adopted criteria require an operational control tower regardless of the amount of actual airport activity at any given time. If there is little or no traffic in the Offutt area, other users will have no difficulty in conducting their operations.

AOPA, SSA, and other commenters requested cutouts for North Omaha, South Omaha and Plattsmouth Airports in order to conduct glider operations and parachuting out of these locations. These activities can be covered by local agreements.

AOPA, and other commenters requested that the altitude of the 5- to 10-mile shelf be raised to 1,200 feet above obstructions. The FAA does not agree. Minimum clearances can be achieved by circumventing obstructions in the Eppley/Offutt area without undue burden. However, the FAA encourages use of ATC services rather than avoidance of the ARSA.

One commenter claimed that ARSA designation should be delayed until a thorough analysis could be conducted regarding the impact of thunderstorms on the proposed ARSA. The FAA does not agree. While the agency does not have extensive experience with ARSA's it does have some experience. Furthermore, the FAA has vast experience with several types of regulatory airspace which are comparable to ARSA's. There has been no correlation between the adverse effects of thunderstorm activity on aviation and these other types of regulated airspace.

AOPA did not agree with ARSA designation at either location, but suggested that if designation was to occur that an elliptical race track configuration be established. Such a configuration would eliminate the triangular areas where the circles meet which, according to AOPA, would trap pilots. The FAA does not agree with this conclusion. Similar configurations exist throughout the country where airport traffic areas meet and in numerous other cases due to adjoining regulatory airspace.

One commenter objected to ARSA designation claiming that attendees at the informal airspace meeting were not given an opportunity to express their views. The FAA does not agree. The informal airspace meeting was not adjourned until there was no response to a request for further comment. Furthermore, a 120-day period was provided for interested parties to submit written comments to the public docket.

The USAF and several other commenters supported the ARSA's as proposed as a significant improvement in aviation safety with minimal impact on the user community.

Fort Lauderdale-Hollywood International Airport, FL

AOPA, and other commenters opposed the designation of an ARSA at Fort Lauderdale but requested that if one was to be designated they requested cutouts for Fort Lauderdale Executive Airport and Pompano Beach Airpark Airport. Provisions for the operations at these two locations will be covered by letters of agreement between the appropriate facilities and regulatory cutouts are not warranted. The FAA believes that where possible this is preferable to modifications to the proposal. If regulatory action was taken based upon letters of agreement, that supposedly reflect current operational needs, additional regulatory action, with its lengthy leadtimes, would be needed to modify local agreements as operational needs changed.

Several commenters requested the altitude of the 5- to 10-mile shelf be raised. These requests were based on the perceived need to establish the shelf altitude above obstructions, or due to the altitude of the adjoining Miami TCA. The NAR recommended, and the FAA adopted, that shelf altitudes should be established at 1,200 feet above ground level. Absent overriding considerations, the FAA has designated shelf altitudes based upon ground level, not the height of obstructions. None of those overriding considerations are present at Fort Lauderdale-Hollywood International Airport, and thus, the altitude of 1,200 feet AGL has been designated. A shelf altitude of 1,500 feet MSL was recommended by one commenter who claimed that since that altitude was sufficient for the Miami TCA the lower altitude of 1,200 feet MSL for the ARSA was not warranted. The FAA does not agree. The rationale used to establish TCA and ARSA altitudes are significantly different. TCA altitudes are established to contain air traffic, whereas, that is not an ARSA consideration. Little effort has been made to achieve standardization in configuring TCA's, whereas standardization is a primary objective in the ARSA configurations.

The Air Line Pilots Association, and other commenters supported ARSA designation at Fort Lauderdale-Hollywood International Airport as an improvement in safety.

Jacksonville International Airport, FL

The North Florida Soaring Society (NFSS) submitted a detailed comment objecting to ARSA designation at Jacksonville International, but requesting modification if designation was to occur. These comments were supported by the SSA, AOPA, and other commenters. The NFSS claimed that recreational flying, especially glider operations, out of Herlong Airport would be severely impacted if the ARSA was designated as proposed. Herlong is surrounded on 3 sides by regulatory airspace and the proposed ARSA would effectively cut off the airport. Thus, the NFSS requested that if designation was to be made that the southern portion be modified to allow nonparticipative access to Herlong. The FAA agrees. Furthermore, due to the number of various operators and the types of recreational flying, local letters of agreement would be unmanageable. Thus, this rule terminates the Jacksonville ARSA at the 291° true radial of the Jacksonville VORTAC.

Several commenters claimed that training activity in the Jacksonville area would be negatively impacted by ARSA designation. With the modification to the ARSA as indicated above any remaining impact can be resolved with local agreements.

Norfolk International Airport, VA

Several commenters requested that the ARSA be modified by aligning it with the primary airway structure in the Norfolk area. They claimed that such a configuration was all that was needed. The FAA does not agree. The ARSA program is neither an IFR or VFR program but is a terminal radar program in which terminal radar air traffic control services are provided to both IFR and VFR air traffic.

The United States Navy commented in support of the Norfolk ARSA. However, Navy comments stated that if compression occurred in the Navy Oceana area that the Navy would request an ARSA be designated there. Furthermore, the Navy requested that an ARSA be designated at Norfolk Naval Air Station (NAS). One of the criterion for the current group of ARSA

candidates is that they be currently contained within a TRSA. Norfolk NAS does not meet that criterion. The subject of compression of air traffic is addressed above. The Navy should coordinate any efforts to propose future ARSA candidates with the FAA's Eastern Region.

Orlando International Airport, FL

The SSA commented that there were significant glider operations at two airports nearby the proposed ARSA and requested that air traffic control personnel work closely with these operators to ensure their operations could continue. The FAA agrees with SSA. Personnel at Orlando International will work closely with these operators either on an individual basis or through a local agreement to provide for glider operations with minimal impact upon those activities.

Numerous commenters requested that the 5- to 10-mile shelf be raised since present and planned obstructions are so arranged that circumnavigation of the obstructions for nonparticipating pilots would be quite extensive. The FAA agrees. The final rule raises the base altitude of the 5- to 10-mile shelf to 1,500 feet MSL. The FAA has determined that this will not negatively impact ARSA services and will alleviate the problem.

One commenter indicated that provision should be made for balloonists to call the control tower on the telephone and obtain authorization to operate within the ARSA. The FAA agrees. This is the procedure to follow absent an operable two-way radio and the procedure that is currently used for such operations when airport traffic areas are involved.

Palm Beach International Airport, FL

AOPA, and several other commenters claimed that ARSA designation would negatively impact flight training in the Palm Beach area. The FAA does not agree. Flight training can be accommodated with local agreements.

AOPA, and several other commenters requested that if ARSA designation was to occur that the cutout for Palm Beach County Airport be enlarged to provide greater nonparticipative access by all operators, but primarily for glider operators. The FAA has enlarged the cutout of this airport.

AOPA, and numerous other commenters requested a cutout for Willis Gliderport. The FAA does not agree that a cutout is warranted for Willis. If operations at Willis cannot be conducted within the current terms of the rule, a local agreement can be established.

Richard Evelyn Byrd International Airport, Richmond, VA

Several commenters including AOPA claimed that the base altitude of the 5- to 10-mile shelf should be raised due to obstructions, if designation was to occur. The FAA does not agree. The height of the obstructions and their location does not warrant raising the shelf altitude.

AOPA commented that the base altitude of the 5- to 10-mile shelf should be raised to at least 2,000 feet AGL in the vicinity of the Presquile National Wildlife Refuge. This request was based upon the belief that provision should be made for pilots to fly over the refuges in accordance with the interagency agreement between the FAA and the Department of the Interior to encourage flight over such areas at no less than 2,000 feet AGL. While the FAA is supportive of that agreement, raising of the shelf altitude is not necessary. Participation requirements within an ARSA requires only the establishment of two-way communications, or prior ATC authorization. Thus, pilots wishing to fly over the refuge that do not have two-way radios may contact the Norfolk Approach Control on the telephone for prior approval for such a flight. Approvals will be granted on an individual and traffic permitting basis.

AOPA, and several other commenters requested a cutout for the New Kent County Airport. Several of these commenters claimed that without a cutout for this airport training activity would be severely impacted. The FAA does not agree. The major portion of the training area utilized by New Kent County operators is beyond the ARSA.

[Airspace Docket No. 85–AWA–10]

Dulles International Airport, VA

The airspace that is currently delegated to Dulles Approach Control is to be modified as a part of the Expanded East Coast Plan and this is anticipated to occur within the next few months. In line with this redelegation the FAA desires to modify the proposed ARSA for Dulles International and will publish a supplemental notice of proposed rulemaking in the **Federal Register** and allow an additional period for comments. Thus, no action on the proposed Dulles ARSA is being taken at this time.

Tampa International Airport, FL

AOPA, and several other commenters requested an extension of the comment period for the Tampa proposal, they claimed the 14 days between the informal airspace meeting and the closing of the comment period was not sufficient to make informed comments. The FAA does not agree. The notice itself contained the proposal for Tampa, and thus, the comment period was 94 days. Those attending the informal airspace meetings were given every opportunity to make verbal comments to the docket. Additionally, the agency believes that 14 days provides ample opportunity to forward written comments for those parties desiring to do so.

AOPA, and other commenters claimed that the proposal would negatively impact flight training in the Tampa area. There are two training areas depicted to the west of Tampa. The one to the northwest will require a local agreement, but the area to the southwest is outside of the ARSA and no impact will result.

The National Business Aircraft Association, and numerous other commenters were supportive of the ARSA but requested the base altitude of the 5- to 10-mile shelf be raised in the vicinity of Peter O. Knight and Vandenberg Airports. Several commenters requested that the shelf be raised in this area to 1,600 feet MSL. The FAA agrees that the base altitude should be raised but believes that an altitude of 1,400 feet MSL will provide sufficient space to accommodate the needs of users in this area.

One commenter requested that the Tampa ARSA be limited to 5 miles to the east and west of Tampa International and 10 miles north and south and basically oval in shape. The FAA does not agree. While the agency recognizes that the primary departure and arrival profiles would occur within the airspace suggested, this would be a sharp departure from the national standard and would not provide the level of service envisioned by the ARSA program.

One commenter claimed that the base altitude of the 5- to 10-mile shelf should be raised in the vicinity of St. Petersburg/Clearwater Airport and MacDill AFB to provide for operations at those locations. Letters of agreement will be established between Tampa and these two locations to provide for their operational needs. The FAA believes that where possible this is preferable to modifications to the proposal. If regulatory action was taken based upon letters of agreement, that supposedly reflect current operational needs, additional regulatory action, with its lengthy lead times, would be needed to modify local agreements as operational needs changed.

The USAF commented that it was supportive of the Tampa ARSA if the

latter was delayed until an ARSA could be proposed for MacDill AFB and both ARSA's could be designated simultaneously; otherwise, the USAF was opposed to designation because of the possibility of the compression of air traffic in the MacDill area as pilots circumnavigated the Tampa ARSA. The USAF should coordinate their request for an ARSA with the FAA's Southern Region. However, to delay designation based upon the possibility of compression, which has been forecast by some for each of the ARSA's, but which has not yet occurred as indicated above, would not be warranted.

The Air Transport Association, and numerous other commenters supported the Tampa ARSA as proposed as a significant improvement in safety.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at the 12 airports listed below. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

[Airspace Docket No. 85-AWA-3]

Daytona Beach Regional Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Daytona Beach Regional Airport (lat. 29°10'51" N., long. 81°03'22" W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of Daytona Beach Regional Airport.

Des Moines International Airport, IA [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Des Moines International Airport (lat. 41°32'06" N., long. 93°39'38" W.), and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Des Moines International Airport.

El Paso International Airport, TX [New]

That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of the El Paso International Airport (lat. 31°48'24" N., long. 106°22'38" W.), excluding that airspace west of long. 106°27'00" W., and that airspace within Mexico; and that airspace extending upward from 5,200 feet MSL to and including 8,000 feet MSL within a 10-mile radius of El Paso International Airport, excluding that airspace beyond an 8-mile arc from the airport beginning at the 115° bearing from the airport clockwise to the Rio Grande River, and that airspace within a 2-mile radius of the West Texas Airport (lat. 31°43'10" N., long. 106°14'37" W.), and that airspace within Mexico, and that airspace west of long. 106°27'00" W. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times established will thereafter be continuously published in the Airport/Facility Directory.

Eppley Airfield, Omaha, NE [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Omaha Eppley Airfield (lat. 41°18'04" N., long. 95°53'36" W.), and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Eppley Airfield.

Fort Lauderdale-Hollywood International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Fort Lauderdale-Hollywood International Airport (lat. 26°04'19"N., long 80°09'13"W.), excluding that airspace south of the north boundary of the Miami, FL, Terminal Control Area (TCA); and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Fort Lauderdale-Hollywood International Airport, excluding that airspace south of the north boundary of the Miami, FL, TCA.

Jacksonville International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Jacksonville International Airport (lat. 30°29'33"N., long. 81°41'24"W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport, excluding that airspace south of the 291° radial of the Jacksonville VORTAC.

Norfolk International Airport, VA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of Norfolk International Airport (lat. 36°53'40"N., long. 76°12'06"W.), excluding that airspace within the Norfolk NAS, VA Control Zone below 2,000 feet MSL; and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL, excluding that airspace south and east of a line extending from a point on the 076° bearing from the airport on the 10-mile arc from the airport to a point on the 152° bearing from the airport on the 5.28-mile arc from the airport and thence to a point on the 170° bearing from the airport on the 10-mile arc from the airport, and excluding that airspace within a 4.3-mile radius of the Oceana NAS Airport (lat 36°49'14"N., long. 76°02'02"W.), and excluding that airspace within the Norfolk NAS Control Zone below 2,000 feet MSL, and excluding that airspace within a 4.3-mile radius of Langley AFB, Hampton Roads, VA (lat 37°05'05"N., long. 76°21'25"W.).

Offutt AFB, NE [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Offutt AFB (lat. 41°07'06"N., long. 95°54'42"W.), excluding that airspace within a 1-mile radius of the South Omaha (Papillion) Airport (lat. 41°09'30"N., long. 96°00'30"W.), and that airspace designated as the Eppley Airfield, Omaha, NE, Airport Radar Service Area (ARSA); and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Offutt AFB, excluding that airspace designated as the Eppley Airfield, Omaha, NE, ARSA.

Orlando International Airport, FL [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Orlando International Airport (lat. 28°25'54"N., long. 81°19'29"W.), and that airspace extending upward from 1,500 feet MSL to and including 4,100 feet MSL within a 10-mile radius of Orlando International Airport.

Palm Beach International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Palm Beach International Airport (lat. 26°40'58"N., long. 80°05'45"W.), excluding that airspace within a 1½-mile radius of the Palm Beach County Park Airport (lat. 26°35'36"N., long. 80°05'09" W.) and west of Interstate 95; and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Palm Beach International Airport.

Richard Evelyn Byrd International Airport, Richmond, VA [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Richard Evelyn Byrd International Airport (lat. 37°30'18"N., long. 77°19'12"W.), and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Richard Evelyn Byrd International Airport.

[Airspace Docket No. 85–AWA–10]

Tampa International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Tampa International Airport (lat. 27°58'31"N., long. 83°32'00"W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport, excluding that airspace extending upward from 1,200 feet MSL to but not including 1,400 feet MSL from V–152 northeast of the airport clockwise to a line beginning at the point where the 139° bearing from Tampa International Airport intersects the 5-mile arc from Tampa International Airport thence via the 139° bearing from the airport to the 1-mile arc from the Peter O. Knight Airport (lat. 27°54'45"N., long. 82°26'45"W.) thence via the 1-mile arc from Peter O. Knight Airport counterclockwise to the point where the 1-mile arc intercepts the 094° radial of the St. Petersburg VORTAC and thence via the 094° radial of the St. Petersburg VORTAC to the 10-mile arc of Tampa International Airport.

Issued in Washington, DC, on February 3, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–2712 Filed 2–6–86; 8:45 am]

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Federal Register

Friday
February 7, 1986

Part IV

Legal Services Corporation

45 CFR Part 1625

Procedures Governing Denial of Refunding; Proposed Rule

LEGAL SERVICES CORPORATION

45 CFR Part 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Corporation's regulations governing denial of refunding. This revision is required to comply with the provisions of the Corporation's appropriations act for 1984, Pub. L. 98–166, as incorporated in the 1985 appropriations act, Pub. L. 98–411, and as contained in the 1986 appropriations act, Pub. L. 99–180. This proposed rule changes the time limits in the current rule to conform with those mandated by the appropriations acts and changes the burden of proof in denial of refunding proceedings as required by Congress in the acts.

DATE: Comments must be received on or before March 10, 1986.

ADDRESS: Comments may be submitted to the Office of General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr., General Counsel, (202) 863–1820.

SUPPLEMENTARY INFORMATION: The Corporation has discovered that amendments to this part that were published as a final rule in the **Federal Register** of July 29, 1985 (50 FR 30714) were not properly adopted. Since this rulemaking proceeding covers the same areas, the amendments made in the July 29, 1985 publication will be revoked through the final rule.

Pub. L. 98–166, which appropriated the Corporation's funding for the fiscal year ending on September 30, 1984, set new requirements for denial of refunding proceedings. These new requirements have been continued in appropriations acts for subsequent years.

The acts provide that the proceedings be in the form of a hearing to show cause, that the recipient have the burden of proof, and that all denial of refunding proceedings must be completed within 90 days, of which 30 days are allowed for the recipient to request a hearing, 30 days for the hearing, and 30 days for the rendering of the final decision.

Procedural changes, including several deadline changes, have been necessitated by the acts. These changes are concentrated in §§ 1625.4, 1625.5, 1625.6, 1625.7, 1625.8, 1625.9, 1625.10 1625.11, and 1625.12.

A discussion of the principal procedural changes follows.

First, §§ 1625.4 and 1625.5 are proposed to be revised to provide that both parties will, as quickly as possible, provide one another with the relevant facts and other information on which they rely. Thus, the Corporation, with its show cause order pursuant to § 1625.4, and the recipient, with its request for a hearing under § 1625.5, will furnish each other:

1. A statement of the facts on which the party relies,
2. The affidavits of witnesses,
3. Copies of all exhibits, and
4. A memorandum showing the legal basis for its position.

Second, each party may ask for relevant documents in the other's possession or control, or for a person to be made available for a pre-hearing deposition or to testify at the hearing. Failure to supply the person or the document could have adverse consequences under the provisions of § 1625.8(f).

Third, the pre-hearing procedures under § 1625.7 have been revised to provide that the hearing examiner will review the submissions of both parties to determine if there is a genuine issue as to the facts and, if it is appropriate, to recommend a decision in the nature of summary judgment, or partial summary judgment, to the President. These procedures are similar to Fed. R. Civ. P. 56, which governs litigation in federal court.

Fourth, § 1625.8 is revised to provide that the hearing will be held not only at a place convenient to the recipient and its client community, but that it will normally be close to a United States District Court and an airport with commercial scheduled service. It also provides that, since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited to:

1. Cross-examination of other parties' affiants,
2. Examination of those employees of the other party who were previously unavailable for some adequate reason, and
3. Rebuttal testimony.

It provides that, unless otherwise agreed upon, the recipient will proceed first, and each party will have a maximum of 7 days to complete its presentation. Recipient will have an additional day for sur-rebuttal testimony and a day for oral argument will be equally divided among the parties. Finally, time limits of 5 and 4 days respectively are placed on the recipient's and the Corporation's post-hearing briefs.

Paragraph (f) of § 1625.8 also sets procedures whereby the hearing examiner may review the merits of any claim of attorney-client privilege and assure that it is properly exercised. The Corporation is especially interested in comments on these provisions and any alternative to how the difficulties posed by the attorney-client privilege may be resolved.

Fifth, § 1625.9 is revised to transfer the burden of proof to the recipient. It provides that the recipient has the burden of going forward and the burden of persuasion by a preponderance of the evidence. It provides that with respect to any ground for denial of refunding in § 1625.3 cited by the Corporation, the recipient must affirmatively show that it is in compliance with or otherwise meets the requirements for refunding. These explicit recitations of the obligations of recipients will avoid any uncertainty, surprise, or confusion.

Sixth, § 1625.10 is revised to give the hearing examiner 16 days instead of 10 to serve his recommended decision on the parties. This is needed because nine of the days are taken up by post-hearing briefs. Section 1625.11 makes the examiner's decision final in 7 days if review by the President is not requested. The request must be sought in 7 days and must detail the reasons for seeking review. The President then has 7 days to adopt, modify, or reverse the recommended decision or to direct further consideration of it.

Seventh, § 1625.12 clarifies how time is computed in complying with the procedures. For example, all time periods include Saturdays, Sundays, and legal holidays, and if a time period ends on a Saturday, Sunday, or legal holiday, the period is extended so as to end on the next day which is not a Saturday, Sunday, or legal holiday. The provision is similar to the federal rules of civil procedure with certain adjustments to ensure that extensions do not cause the process to exceed the 90 days. Also, any time limit can be shortened by mutual consent of the parties.

Finally, changes in terminology were necessary to reflect the actual operative purposes of specific sections. For example, the heading for § 1625.5 was changed from "Initiation of proceedings" to "Request for hearing."

Where we have revised a section dealing with the "presiding officer" of the hearing, we have changed it to "hearing examiner" to conform to the statutory language. We will conform the remaining sections when we publish the final rule. Unchanged sections and

subsections are not included in the notice.

One point of public policy should be noted although it is not a part of the proceedings under this regulation. To avoid any disruption in the delivery of legal assistance to eligible clients, the Corporation will seek to find a suitable substitute or alternative delivery service when it commences any denial of refunding proceeding.

List of Subjects in 45 CFR Part 1625

Administrative practice and procedures, Legal Services; Legal Services Corporation.

For the reasons set out in the preamble, 45 CFR Part 1625 is proposed to be amended as follows:

PART 1625—DENIAL OF REFUNDING

1. The authority citation for Part 1625 is revised to read as follows:

Authority: Secs. 1006(b) (1) and (3), 1007(a) (1), (3), and (9), 1007(d), 1007(e), 1008(e), and 1011 of the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f (d) and (e), 2996g(e) and 2996j); Pub. L. 98–166, 97 Stat. 1071; Pub. L. 98–411, 98 Stat. 1545; Pub. L. 99–180, 99 Stat. 1136.

2. Section 1625.1 is revised to read as follows:

§ 1625.1 Purpose.

This part is intended to provide timely, full, fair, and impartial procedures for allowing a recipient to show cause why its funding should be continued when the Corporation has made a preliminary determination that refunding of a grant or contract should be denied. This part is further intended to provide for completion of these procedures in a timely manner so that funding issues are expeditiously resolved so as to avoid unnecessary and protracted disruption in the delivery of legal services to eligible clients.

3. Section 1625.4 is revised to read as follows:

§ 1625.4 Notice.

When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice upon the recipient, which shall include:

(a) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of the factual grounds for the denial of refunding; if the ground specified in § 1625.3(d) is asserted, the statement shall specify the other organization that the Corporation asserts could better and more economically serve eligible clients;

(b) An affidavit from each witness upon whom Corporation's counsel relies covering that witness' direct testimony and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein;

(c) A memorandum of points and authorities showing that the affidavit(s) specified in paragraph (b) of this section constitute evidence of facts sufficient to support a denial of refunding under the applicable legal standards;

(d) A directive to show cause, signed by the President of the Corporation, which shall inform the recipient that, if within 30 days of the recipient's receipt of this notice the Corporation receives a request for a hearing as specified in § 1625.5 of this part and accompanied or preceded by all documents specified by paragraph (f) of this section (or adequate explanation of why it was impossible or unreasonable to comply and accompanied by affidavits on personal knowledge as to the efforts made to comply), a hearing will be held; the directive shall identify:

(1) The name of the hearing examiner;

(2) The name of the Corporation's counsel;

(3) The time and place of the pre-hearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures.

(f) A requirement, signed by the President or the hearing examiner, may be included that the recipient produce a specific document or documents in its possession, custody, or control within 30 days of receipt of the notice or produce a person in its employ to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

4. Section 1625.5 is revised to read as follows:

§ 1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; the recipient may not rest on mere allegations or denials, but must set forth by affidavit specific facts showing that a genuine issue of material fact is presented for a show cause hearing; and

(d) A memorandum of points and authorities showing that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show cause why refunding should not be denied under applicable legal standards.

(e) The recipient may request the hearing examiner to require that the Corporation or another party upon sufficient notice, produce a specific document or documents in its possession, custody, or control or produce a person in its employ to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

5. Section 1625.7 is amended by adding a new paragraph (a), by redesignating former paragraphs (a), (b), and (c) as (b), (c), and (d), and by revising new paragraphs (b) and (c) to read as follows:

§ 1625.7 Pre-hearing procedure.

(a) (1) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right to a hearing and a final decision shall be entered by the President.

(2) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to § 1625.4(f) to determine before the date set for the hearing whether there is any

genuine issue as to any material fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issue as to any material fact and that either party is entitled to summary judgment as a matter of law, the hearing examiner shall issue to the President a written recommended decision with findings of fact and reasons that the President adopt such decision. If the hearing examiner should recommend and the President adopt a decision with a partial summary judgment, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At the pre-hearing conference, the matters to be considered shall include:

(1) Whether summary judgment or partial summary judgment ought to be issued;

(2) Proposals to define and narrow the issues;

(3) Efforts to stipulate the facts, in whole or in part;

(4) The order of presentation of exhibits and witnesses (as earlier identified);

(5) The possibility or presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and

(8) Such other matters as may be appropriate.

(c) The hearing examiner may establish specific procedures consistent with this part for conduct of the show cause hearing. The hearing examiner may require or permit written submission of additional statements discussing any matter described in paragraph (b) of this section as well as any other arguments and supporting material at any time prior to completion of the show cause hearing.

6. Section 1625.7 is further amended by inserting ", custody, or control" after the phrase "document in its possession" each place the phrase appears, in newly designated paragraph (d), and by adding after the first sentence of newly designated paragraph (d) a new sentence to read as follows:

(d) * * * The hearing examiner shall not issue such requirements at the request of the Corporation's counsel if request is not made within seven days of the Corporation's receipt of the request for a hearing, or at the request of the recipient, if request is not made at or before the time it makes a request for a hearing, unless the requesting party can show that it could not have anticipated its need to request the requirement and failure to issue the requirement would cause a manifest injustice. * * *

7. Section 1625.8 is amended by deleting and reserving paragraph (a) as indicated and by revising paragraph (b) to read as follows:

§ 1625.8 Conduct of the hearing.

(a) [Reserved]

(b) The show cause hearing shall be held within 7 days after the pre-hearing conference at a place convenient to the recipient, to the community it serves, and to witnesses determined by the hearing examiner to be necessary for the show cause hearings; the show cause hearing shall normally be held in or near a city having both a United States District Court and an airport with regularly scheduled airline service.

* * * * *

8. Section 1625.8 is further amended by adding "show cause" before "hearing" each place that word appears in paragraphs (c) and (d) and by revising paragraphs (e), (f), and (j) to read as follows:

* * * * *

(e) Since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited to cross-examination of the other party's affiants, examination of those employee(s) of the other party from whom the party was unable, despite due diligence, to obtain affidavit(s) or pre-hearing deposition(s), and rebuttal testimony (if allowed). The recipient will bear the burden of proceeding first and will be allowed a total of up to 7 days to cross-examine the Corporation's affiant(s) or to present testimony from another party's employee(s). The Corporation will then be allowed a total of up to 7 days to cross-examine the recipient's affiant(s), to present testimony from employee(s) of another party, or to adduce rebuttal testimony. The recipient will then be allowed a total of up to one day of sur-rebuttal testimony. The hearing examiner will allow a total of up to one day divided evenly between the parties for closing arguments.

(f) If a party fails, without good cause, to produce a person or document required to be produced under §§ 1625.4(f), 1625.5(e), or 1625.7(d), the hearing examiner may make a finding adverse to the party or any lesser determination. If a document is withheld on the basis of privilege, the hearing examiner may require the party to provide a version of the document that does not contain privileged information, explain the basis of the withholding, and, if it appears that the privilege is not asserted in good faith or is asserted in error, require production of the document for *in camera* inspection. After such inspection, the hearing examiner may issue such finding or order as the facts may warrant. If the attorney-client privilege is asserted, the hearing examiner may require the party to provide evidence of its good faith efforts to obtain an adequate waiver of the privilege from the client. Upon a finding that a party did not make good faith efforts to obtain authorization to produce the document, the hearing examiner may make a finding adverse to the party or any lesser determination.

* * * * *

(j) At the discretion of the hearing examiner, the parties may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. The recipient's brief shall be served within 5 days of the close of the hearing and the Corporation's 4 days thereafter. A party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within the time limit set for a brief).

* * * * *

9. Section 1625.9 is revised to read as follows:

§ 1625.9 Burden of proof.

The recipient shall have both the burden of going forward and the ultimate burden of persuasion by a preponderance of admissible evidence that refunding should not be denied. If the Corporation has asserted, as a ground for the denial of refunding, the grounds specified in:

(a) Section 1625.3(a), the recipient must establish by a preponderance of admissible evidence that it is not in a class of recipients affected by the law, the Corporation's rule, regulation, guideline or instruction, or a funding policy, standard, or criterion approved by the Board;

(b) Section 1625.3(b), the recipient must establish by a preponderance of admissible evidence (1) that it has complied during the specified period of time in all respects with each specified provision of law, with each specified provision of the Corporation's rules, regulations, guidelines, and instructions, and with each specified term and condition of current or prior grants from,

or contracts with, the Corporation or (2) that all of its violations are merely minor or technical;

(c) Section 1625.3(c), the recipient must establish by a preponderance of admissible evidence that (1) it has provided economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation or (2) the Corporation has not given the recipient prior notice of its failure and an opportunity to take effective corrective action and the recipient could not reasonably be expected to have prevented or corrected its failure without notice and an opportunity to have taken effective corrective action before it received the notice specified in section 4 of this part;

(d) Section 1625.3(d), the recipient must establish by a preponderance of admissible evidence that it could serve eligible clients in its service area better and more economically than the other organization specified in the notice.

10. Paragraph (a) of § 1625.10 is amended by revising the introductory language to read as follows:

§ 1625.10 Recommended decision.

(a) Within 16 days of the completion of the hearing, the hearing examiner shall cause a recommended decision to be served upon the parties:

* * * * *

11. Section 1625.11 is revised to read as follows:

§ 1625.11 Final decision.

(a) If neither the Corporation's counsel nor the recipient requests review by the President, the recommended decision shall become final 7 days after receipt by the recipient.

(b) The recipient or the Corporation's counsel may seek review by the President of the recommended decision. A request shall be made in writing to the President and other parties shall be served within 7 days of receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within 7 days after receipt of a request for review of the recommended decision, the President shall adopt, modify or reverse the recommended decision, or shall direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon receipt by the recipient.

12. Section 1625.12 is amended by redesignating paragraph (c) and (d), by revising paragraphs (a) and (b), and adding a new paragraph (c) as follows:

§ 1625.12 Time and waiver.

(a) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the President or the hearing examiner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. All periods shall otherwise include Saturdays, Sundays, and legal holidays. A deadline for a party or the hearing examiner to submit a document is met only if the document is actually received by counsel for each other party and by the hearing examiner by the end of the relevant time period.

(b) *Enlargement of Time.* The President or the hearing examiner may enlarge any period of time on agreement of the parties if, and only if, the President or the hearing examiner makes a determination in writing or on the record either that:

(1) The enlargement will not prevent completion of the hearing within 60 days from receipt of the notice by the recipient or prevent the President from reaching a final decision—with at least 7 days to consider the request for review—within 90 days from receipt of notice by the recipient; or

(2) The existence of extraordinary circumstances that require the enlargement of time to prevent manifest injustice.

(c) *Reduction of time.* On agreement of the parties and the hearing examiner, any period of time may be shortened.

* * * * *

Dated: February 6, 1986.

John H. Bayly, Jr.,

General Counsel.

[FR Doc. 86-2917 Filed 2-6-86; 10:55 am]

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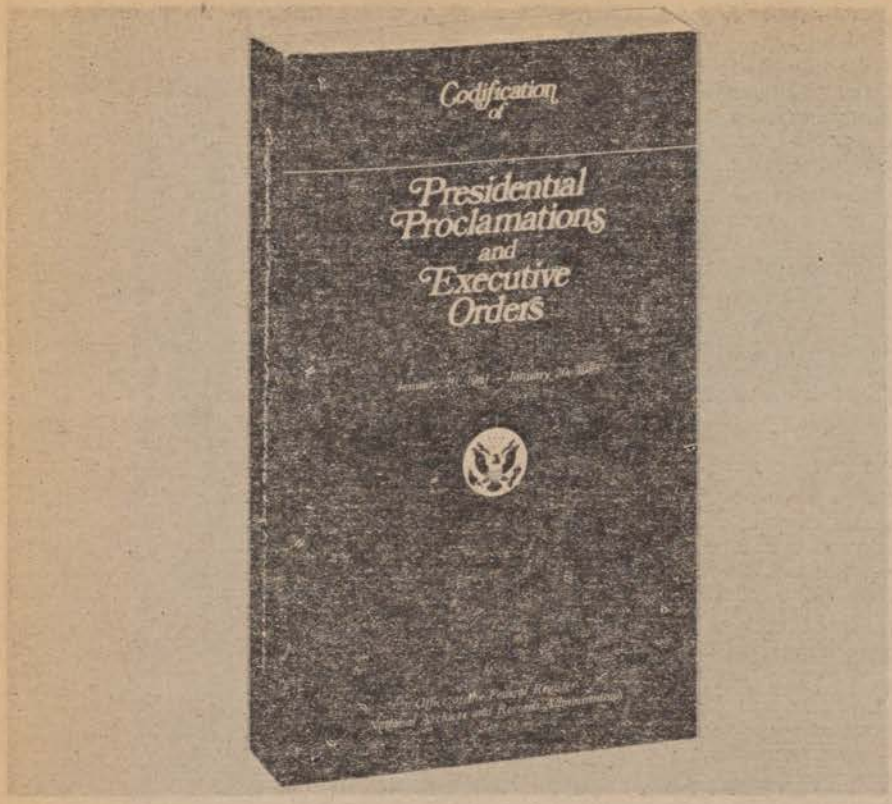

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